



F E D E R A L T R A N S I T A D M I N I S T R A T I O N

Rhode Island Department of Transportation
DBE Compliance Review
Final Report
March 2016
Federal Transit Administration



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology

This report details the findings of FTA's compliance review of the Rhode Island Department of Transportation's (RIDOT's) Disadvantaged Business Enterprise (DBE) program implementation. It examines RIDOT's DBE program procedures, management structure, actions, and documentation.

On behalf of FTA's Office of Civil Rights, the Collaborative, Inc. of Boston, Massachusetts conducted the review in three stages:

1. Preparation: compilation of information covering policies, procedures and reported data.
2. Site visit: observation of RIDOT's DBE program files, contracts, and interviews
3. Analysis and reporting: identification of deficiencies requiring corrective actions and suggestions of effective practices in DBE programs

RIDOT's DBE program includes the following positive program elements:

Positive Program Elements

- RIDOT's DBE Program Plan contains all of the required elements.
- Rhode Island's Uniform Certification Program (UCP) is well organized and properly administered.

Administrative Deficiencies

- The DBE Program Plan contains out-of-date information and does not reflect recent changes within the agency.
- The proposed organization chart does not demonstrate clear lines of communication and authority between the DBE Liaison Officer (LO) and the RIDOT Director
- Group definitions within the UCP for socially and economically disadvantaged individuals is incorrect
- RIDOT does not apply DBE goals to its FTA-funded commuter rail operations
- Reporting to FTA's TrAMS (formerly TEAM) is incomplete and often late.

RIDOT must address the following substantive deficiencies to comply with 49 CFR Part 26:

Substantive Deficiencies

- RIDOT does not have sufficient mechanisms in place to consistently track payments to DBE firms for some of its FTA-funded projects.
- RIDOT does not monitor the MBTA, its subrecipient for commuter rail operations in Rhode Island.
- RIDOT does not always follow its own procedures requiring written notification of pending DBE subcontractor terminations.
- RIDOT does not have proper methods to ensure compliance or to apply necessary remedies.

This report highlights several steps to help RIDOT implement its DBE program in good faith.

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1 General Information

This chapter provides basic information concerning this compliance review of the Rhode Island Department of Transportation. Information on the grantee, the review team, and the dates of the review are presented below.

Grant Recipient:	Rhode Island Department of Transportation (RIDOT)
City/State:	Providence, Rhode Island
Grantee Number:	1878
Executive Official:	Peter Alviti, Jr. P.E., Director
On-site Liaison:	Vera Querceto
Report Prepared By:	The Collaborative, Inc., Boston, MA
Dates of Site Visit:	August 12–14, 2015
Review Team Members:	Shakira Abdul-Ali, Z. Wayne Johnson, Ian Kolesinskas

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2 Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

RIDOT is the recipient of one or more Federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, RIDOT is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in RIDOT’s DBE program and were the basis for this compliance review.

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3 Purpose and Objectives

This chapter discusses the purpose and objectives of FTA's DBE compliance reviews and the review process.

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26.

The primary purpose of the compliance review is to determine the extent RIDOT has implemented 49 CFR Part 26 as represented in its DBE Program Plan. The compliance review is intended to be a fact-finding process to: (1) assess RIDOT's DBE Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

The compliance review is not solely designed to investigate whether there is discrimination against individual DBE firms or complainants or to adjudicate these issues on behalf of any party.

3.2 Objectives

The objectives of DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of Federally assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether RIDOT is honoring its commitment to comply with 49 CFR Part 26.
- Examine the required components of RIDOT's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies, and document the compliance status of each component.
- Gather information and data regarding the operation of RIDOT's DBE Program Plan from a variety of sources, including DBE program managers, other RIDOT management personnel, DBEs, prime contractors, and other stakeholders.

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4 Background Information

The purpose of this section is to provide an understanding of RIDOT's operations and scale. The section highlights RIDOT's services, FTA projects, and history of its DBE program.

4.1 Introduction to RIDOT and Organizational Structure

RIDOT's role is to design, construct, and maintain the state's surface transportation system. RIDOT has a staff of more than 700 employees responsible for the statewide multimodal transportation network consisting of 6,419 miles of public roads and highways, 1,154 bridges, four rail stations, and 60+ miles of bicycle and pedestrian paths. The Rhode Island Public Transit Authority (RIPTA), an independent authority and an FTA grantee, operates fixed route bus and complementary paratransit service throughout the state.

Based on 2014 U.S. Census data, Rhode Island's population is 1,055,173, with a racial composition of 87.3 percent White, 14 percent Hispanic, 6.4 percent Black, 4.1 percent Asian, 1.7 percent American Indian and Alaska Native, and 0.3 percent Native Hawaiian or Other Pacific Islander.

Based on 2007 U.S. Census Quickfacts, there are just under 97,000 business enterprises, of which approximately 3.3 percent are Black-owned, 6 percent are Hispanic-owned, and 2.1 percent are Asian-owned. Just over 27 percent are women-owned.

Organizational Structure

RIDOT was established by the state legislature in 1970 to assume responsibilities from the Department of Public Works, the RI Turnpike and Bridge Authority, and the Council on Highway Safety. Since its establishment, RIDOT has undergone a series of reorganizations with functions added and removed, including:

- 1973: Division of Roads and Bridges removed
- 1974: Division for Administrative Adjudication added (for traffic offenses)
- 1979: Aeronautics Advisory Board removed
- 2004: Management and Information Systems staff consolidated into the Department of Administration's Division of Information Technology
- 2006: Division of Motor Vehicles moved to the newly created Department of Revenue.
- 2008: Creation of the Office of Quality Compliance & Review

Under its current configuration, RIDOT is authorized to manage three primary transportation-related functions and responsibilities involving FTA/FHWA funds and programs:

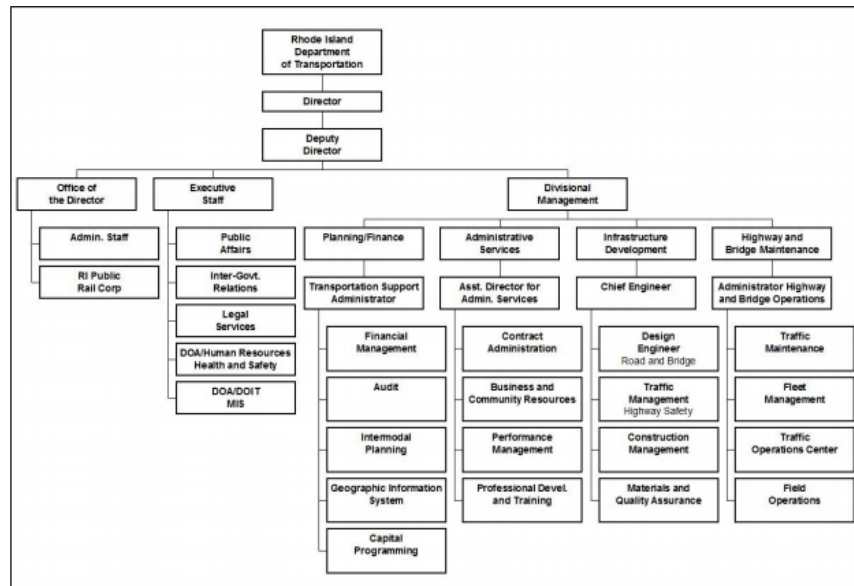
- Planning – Develop feasibility plans and other transportation-related studies, and collaborate with the Division of Planning (Department of Administration) on the transportation elements of the long-range state guide plan
- Public Works – Oversee design, engineering and construction of roads, bridges and other transportation projects, including commuter rail facilities
- Maintenance – Maintain all roads, bridges and other transportation facilities under the jurisdiction of RIDOT

The settlement of a pending pension reform lawsuit and the new administration has led to numerous vacancies that RIDOT is trying to fill, including DBE program positions.

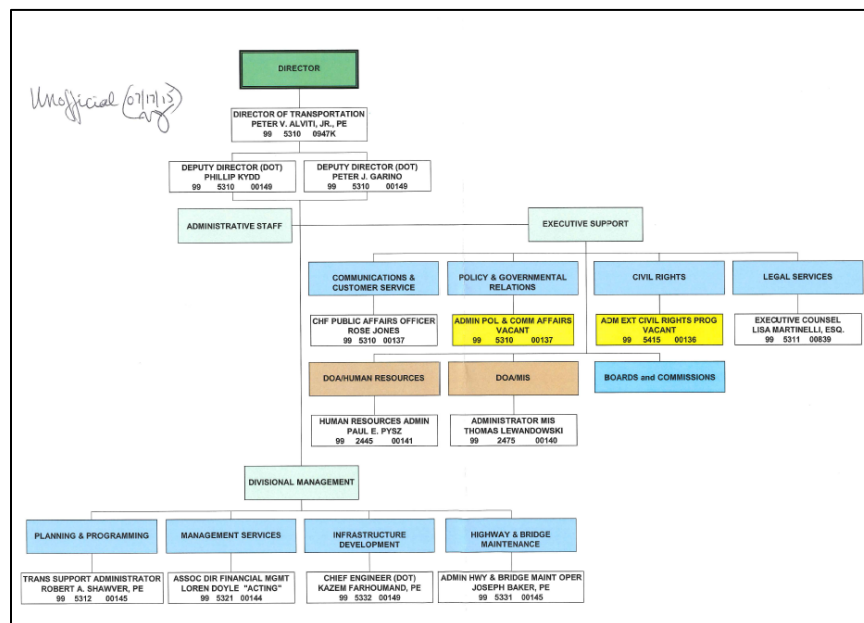
The charts below reflect RIDOT's organizational structure (as presented in its DBE Program Plan) as well as RIDOT's proposed organization that the review team received before the site visit. Vacant positions

are shown in yellow. While the proposed organization chart shows lines of relationships and authority, the chart does not identify the DBE Liaison Officer (DBELO) or show the connection between the DBELO and the CEO. (See the additional DBELO discussion in Section 6.3.)

RIDOT Organization Chart (DBE Program Plan)



RIDOT Organization Chart (Proposed)



Pilgrim Partnership

In 1988, to extend commuter rail service from Boston to Providence, RIDOT executed the Pilgrim Partnership, an agreement with the Massachusetts Bay Transportation Authority (MBTA). That same year, the MBTA began providing commuter rail service to Providence, and now provides service farther south to T.F. Green Airport in Warwick and to Wickford Junction in North Kingstown. RIDOT uses Federal funds to pay for stations, a layover facility in Pawtucket, and for commuter rail operations. Under the operating agreement in this partnership, RIDOT uses FTA funds to subsidize the service. As such,

MBTA is RIDOT's subrecipient¹. Deficiencies related to this subrecipient relationship are discussed in Section 6.8 (Determining/Meeting Goals) and Section 6.13 Subsection E (Record Keeping and Enforcements).

RIDOT Management Practices

Media sources and public reports describe a longstanding set of organizational issues within RIDOT. The current Governor and RIDOT Director have acknowledged the need to overhaul management practices within the agency. Issues include:

- No single project manager to oversee projects and divide responsibilities among various organizational units, weakening accountability for project planning, scheduling, execution, etc.
- The use of outside contractors for functions that can be done internally, resulting in higher costs than those peer agencies incur
- Lack of systems to address longstanding challenges such as bridges in disrepair with too many initiatives crisis-driven

4.2 Budget and FTA-Assisted Projects

RIDOT's funding is from local, state, and Federal sources. RIDOT recently completed and is currently implementing the following FTA-assisted projects:

- Wickford Junction Station and Garage (completed in 2012), a series of land and building enhancements in North Kingstown. Operated in collaboration with MBTA, the station serves passengers traveling between Boston, Providence, and North Kingstown. This project had an 8.5 percent DBE goal.
- Pawtucket-Central Falls Commuter Rail Station Alternatives Study, evaluating restoration of commuter rail service in Pawtucket, which would provide a new stop between existing commuter rail stations in Providence and South Attleboro, MA. This project has a 10 percent DBE goal.
- Providence Station Design, a project to improve pedestrian circulation, bicycle facilities, landscaping, and other amenities for the existing Downtown Amtrak and commuter rail station. This project has a 20 percent DBE goal.

Table 4-1 lists the funding amounts for FTA-Assisted RIDOT projects, excluding MBTA subrecipient funds, for Fiscal Years (FY) 2011–2014.

¹ Per the FTA Master Agreement, "Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term 'subrecipient' also includes the term, 'subgrantee,' but does not include 'third party contractor' or 'third party subcontractor.'"

Table 4-1 – RIDOT’s FTA-Assisted Projects

Fiscal Year	FTA-Assisted Projects	Amount
2011	Pawtucket-Central Falls study	\$750,000
	Fixed guideway commuter rail	\$27,382,500
	ITS implementation	\$5,000,000
	Wickford Station enhancements	\$700,000
2012	Pawtucket-Central Falls study	\$600,000
	Fixed guideway commuter rail	\$10,304,000
	ITS implementation	\$1,120,000
	Wickford Station enhancements	\$560,000
2013	Pawtucket-Central Falls study	\$500,000
	Fixed guideway commuter rail	\$915,000
	Wickford Station enhancements	\$700,000
2014	Pawtucket-Central Falls study	\$262,100
	Wickford Station enhancements	\$700,000

* Does not include MBTA subrecipient funds (see Section 6.8)

4.3 DBE Program

At the time of the site visit, RIDOT’s DBE program was in transition, in part due to the aforementioned agency reorganization. Assistant Legal Counsel Vera Querceto was serving as Acting Administrator of the Civil Rights Division. Ms. Querceto shared responsibility for the DBE program with Vanessa Crum, Administrator of Contracts and Specifications. Ms. Crum had previously served as DBELO. The reorganization remained incomplete through December 2015. After the August 2015 site visit, Mr. Paul Sylvia was named Acting Administrator of the Civil Rights Division, and RIDOT advertised several Civil Rights Division vacancies, but had yet to name a DBELO. For these and other reasons, RIDOT does not appear to have the capacity to adequately meet the DOT regulatory requirements for its DBE program, as discussed throughout Section 6 of this report.

At full staffing levels, RIDOT’s Civil Rights Division includes an Administrator who is typically the designated DBELO, a Senior External Compliance Officer, and a Senior Equal Opportunity Officer. These officials receive as-needed support from at least three other RIDOT professionals in the Planning Department. (See Section 6.3.) All RIDOT employees involved with DBE program activities have other responsibilities.

As discussed in Sections 6.12 and 6.13, the Rhode Island Department of Administration (RIDOA) oversees minority, women, and disadvantaged business enterprise certification activities in the state, including the Uniform Certification Program (UCP) for RIDOT, RIPTA, and the Rhode Island Airport Corporation (RIAC). Ms. Patsy Peterson, Senior External Equal Opportunity Officer, manages the UCP program and RIDOT pays her salary. Ms. Peterson also certifies vendors for the state’s Minority Business Enterprise/Women Business Enterprise (MWBE) program.

RIDOT’s DBE program is properly designed, yet many opportunities exist for improvement, particularly recordkeeping and contract compliance. Deficiencies discussed throughout Section 6 derive in part from the fact that no one individual has exclusive DBELO responsibility.

5 Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a recipient of FTA funding is in compliance with the 49 CFR Part 26 DBE requirements. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of findings in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures, or operations; instead, it simply indicates that no deficiencies were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to RIDOT DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by RIDOT as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed made available to the public and updated at least annually [49 CFR 26.31]
- Determination that over-concentration does (not) exist and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when RIDOT did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include RIDOT seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- Nondiscrimination and prompt payment clauses are included in all FTA-assisted contracts and a prompt payment verification process is in place. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 -26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].

- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

5.2 Methodology

The FTA Office of Civil Rights sent a notification letter to Ms. Vera Querceto, RIDOT's Assistant Legal Counsel, on June 26, 2015, to confirm the time frame for the review and ask for information within 21 days. (See Attachment A.)

Before the site visit, the review team examined the requested materials, as well as documents available from FTA's TEAM website and other sources.

At the beginning of the compliance review, FTA representatives, RIDOT staff, and the review team conducted an opening conference with the following participants:

- Paul Sylvia, Chief of Program Development, RIDOT
- Vera H. Querceto, Assistant Legal Counsel, RIDOT
- Vanessa Crum, Administrator, Contracts & Specifications, RIDOT
- Andy Koziol, Supervising Planner, RIDOT
- Thom Mathews, Student Intern – Planning Asst., RIDOT
- Stephen A. Devine, Chief of Intermodal Planning, RIDOT
- Jean Heiss, Sr. External EEO Compliance Officer, RIDOT
- Marie Y. Joseph, Sr. EO Officer, RIDOT
- Patsy Peterson, Sr. External EEO Certification Officer, RIDOT
- Brian Whitehead, Program Specialist, FTA Office of Civil Rights (by telephone)
- Britney Berry, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- Antoinette Davis, Equal Opportunity Specialist, FTA Office of Civil Rights (by telephone)
- Margaret (Peggy) Griffin, FTA Region I Civil Rights Officer (by telephone)
- Shakira Abdul-Ali, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Ian Kolesinskis, Review Team Member, the Collaborative

Following the opening conference, the review team examined RIDOT's DBE Program Plan and other documents. They interviewed staff from the diversity, procurement, and finance offices regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. They also examined a sample of contracts for their DBE elements.

At the end of the site visit, FTA representatives, RIDOT staff, and the review team convened for the exit conference to discuss initial findings and corrective actions. Participants included:

- Peter Garino, Deputy Director, RIDOT
- Vera H. Querceto, Assistant Legal Counsel, RIDOT
- Vanessa Crum, Administrator, Contracts & Specifications, RIDOT
- Jean Heiss, Sr. External EEO Compliance Officer, RIDOT
- Marie Y. Joseph, Sr. EO Officer, RIDOT

- Patsy Peterson, Sr. External EEO Certification Officer, RIDOT
- Brian Whitehead, Program Specialist Officer, FTA Office of Civil Rights (by telephone)
- Britney Berry, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- Antoinette Davis, Equal Opportunity Specialist, FTA Office of Civil Rights (by telephone)
- Margaret (Peggy) Griffin, FTA Region I Civil Rights Officer (by telephone)
- David Chandler, Program Administrator, FHWA Region I Civil Rights Officer (by telephone)
- Jennifer Riess, Equal Opportunity Specialist, FTA Office of Civil Rights (by telephone)
- Janelle Hinton, Program Analyst, FTA Office of Civil Rights (by telephone)
- Monica McCallum, Regional Operations Division Chief, FTA Office of Civil Rights (by telephone)
- Shakira Abdul-Ali, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Ian Kolesinskis, Review Team Member, the Collaborative
- William Schwartz, Project Manager, the Collaborative

RIDOT received a draft copy of the report to review and respond. See Attachment E.

5.3 Stakeholder Interviews

Based on firms listed in the RI MBE/DBE directory and other firm names RIDOT provided, the review team arranged three meetings with DBE stakeholders. On the evening of August 13, the review team met three members of the RI Black Business Association (RIBBA), whose mission is to enhance the growth and empowerment of minority owned businesses by providing them a forum to participate in the local and global economy. A review team member, FTA Region I Regional Civil Rights Officer Margaret Griffin, and Federal Highway Administration Region I Program Administrator David Chandler also met privately with a fourth firm that is not a RIBBA member. The following summarizes the main discussion points:

Construction Companies

Some DBEs expressed frustration with the lack of work for DBE firms and reported this concern to RIDOT. Specific concerns include work distribution and fear of retaliation and financial coercion from prime contractors. In some cases, this includes being required to:

- Co-sign RIDOT payment checks with the prime contractor
- Purchase concrete only from the prime's concrete facility
- Exclusively use the prime's construction equipment

One DBE reported that the prime contractor required a company checkbook and signature stamp, so it could endorse RIDOT payment checks with the DBE firm's signature.

Several DBE firms asserted that Portuguese-owned DBE firms receive more subcontractor work than those owned by other socially and economically-disadvantaged individuals, particularly in the concrete construction category. (See Section 6.6.)

One DBE firm (Firm A) interviewed during the RIBBA interview described a meeting he requested with RIDOT and his prime contractor to address concerns on a project. According to Firm A, the prime asserted that a second DBE subcontractor could perform the work without objection to the prime's requirements. In the meeting, RIDOT allowed the prime contractor to replace the Firm A. According to Firm A, neither RIDOT nor the prime contractor provided him with a copy of the required "Intent to Substitute/Terminate" notice. (See Section 6.8, Subsection D – Protecting Against Termination for

Convenience.) Firm A also stated that five major construction firms also control the state's concrete plants and require subcontractors to exclusively purchase concrete at these plants.

At the same RIBBA meeting, a newer firm reported a satisfactory experience, including timely payments, with one of the five major construction firms.

Turino Group

On the morning of August 14, a review team member met with the Turino Group, RIDOT's DBE supportive services contractor for Mission 360, the agency's business development program to support underutilized DBEs and emerging businesses that perform or will perform DOT work. (See Section 6.7.)

Overall, Turino Group described a very good relationship with RIDOT and described RIDOT as knowledgeable and involved with the DBE program. Turino Group's expressed some concern about the lack of distinction between the FTA and FHWA program goals and Mission 360's goal.

6 Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to RIDOT's DBE program are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review
- A statement concerning the DBE requirements being violated or potentially being violated
- A statement concerning the required corrective action to resolve the issue

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 DBE Program Plan

Basic Requirement (49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the recipient's implementation of the DBE program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion: During this compliance review, deficiencies were found with RIDOT's DBE Program Plan (see Attachment B) with respect to how it describes the DBELO's responsibilities. While the Program Plan contains all required elements, the review team identified Program Plan *implementation* deficiencies, discussed later in this section.

The DBE Program Plan states that Vanessa Crum, Administrator, Office of Business and Community Resources, is the DBELO, reporting to the Assistant Director for Administrative Services. Although Ms. Crum shared responsibility for the program at the time of the site visit, staff attrition, retirements, ongoing organizational changes and personal choice precluded her from continuing to serve as the DBELO. In July 2015, RIDOT designated Ms. Vera Querceto to temporarily assume DBELO responsibilities. While Ms. Querceto works closely with top leadership, she does not report directly to the Director. Furthermore, the name of the current RIDOT Director, Mr. Peter Alviti, is not included in the Program Plan, and the organization chart is out of date. RIDOT acknowledged these issues and pledged to complete the reorganization and designate a permanent DBELO by the end of December 2015.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must update its DBE Program Plan to name the current DBELO, clarify the reporting relationship within RIDOT, update the name of the RIDOT Director, and include a current organization chart. RIDOT must provide a copy of this updated information to the FTA Office of Civil Rights.

6.2 DBE Policy Statement

Basic Requirement (49 CFR Part 26.23): Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

Discussion: During this compliance review, deficiencies were found with RIDOT's DBE Policy Statement. Similar to the DBE Program Plan, the Policy Statement references Ms. Crum, who is no longer DBELO, and identifies (former Director) Michael Lewis as RIDOT Director (without his signature). With respect to dissemination, the Policy Statement states,

RIDOT has disseminated this policy statement to the Deputy Director, Division Administrators and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts. The policy statement is available on RIDOT's website www.dot.ri.gov.

At the time of the site visit, RIDOT stated that it had issued a press release announcing its Policy Statement but did not provide a copy of the release to the review team. Further, while the DBE Program Plan states that the Policy Statement is available on RIDOT's website, as of December 2015, the Policy Statement is not available. Finally, RIDOT could not demonstrate that it had broadly disseminated its Policy Statement to the DBE and non-DBE business communities.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT's DBE Policy Statement must name a permanent DBELO and identify the current RIDOT Director, who must sign it. RIDOT must disseminate the revised statement consistent with its DBE Program Plan and must maintain a copy of its current statement on its website. RIDOT must provide a copy of its revised statement to FTA Office of Civil Rights.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25): Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

Discussion: During this compliance review, deficiencies were found with respect to the DBELO and with the adequacy of staffing to properly administer RIDOT's DBE program.

DBELO

At the time of the site visit, RIDOT did not have a permanent DBELO. Assistant Legal Counsel Vera Querceto and Administrator of Contracts and Specifications Vanessa Crum were jointly responsible for monitoring and enforcing the DBE program. For more than seven years, Ms. Crum operated as the DBELO; her original role was in contract compliance. At the end of June 2012, she relinquished the DBELO role.

At the time of the site visit, Ms. Querceto was serving as both Acting DBELO and as the administrator of external civil rights programs. She explained that she has direct access to the RIDOT Director.

RIDOT's proposed organization chart (see Section 4.1) places the Civil Rights Division under "Executive Support," and its director, which is typically the DBELO, under the two Deputy Directors. The chart does not indicate direct access to the CEO. As discussed in Section 6.4, RIDOT acknowledged these issues and pledged to complete the reorganization and designate a permanent DBELO by the end of December 2015.

Staffing

In addition to Vanessa Crum and Vera Querceto, RIDOT's DBE team includes:

- Patsy Peterson, Senior External EEO Certification Officer² (certifies DBEs, maintains UCP directory)
- Jean Heiss, Senior External EEO Compliance Officer (sets DBE contract goals)
- Marie Y. Joseph, Senior EEO Officer (supports DBE program initiatives)

At the time of the site visit, all of the above individuals are also involved in other civil rights-related tasks. In addition, others within RIDOT provide support to RIDOT's DBE program, including:

- Paul Sylva, Chief, Program Development (subsequently appointed Civil Rights Division Acting Administrator)
- Andy Koziol, Supervising Planner
- Stephen Devine, Chief, Intermodal Planning

Instances of RIDOT employees functioning in more than one role are not unique to RIDOT's Civil Rights Division. Many employees share responsibilities for various programs and projects, and the organizational issues discussed in Section 4.1 reflect longstanding organizational capacity problems. These issues extend to DBE activities. Based on the deficiencies found in this review, RIDOT does not have adequate staff to administer a compliant DBE program.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must identify a DBELO who has direct and independent access to the RIDOT Director. RIDOT must fill all vacant positions within its Civil Rights Division, and provide adequate DBE training to all employees with DBE responsibilities. RIDOT must report its progress to the FTA Office of Civil Rights.

6.4 DBE Financial Institutions

Basic Requirement (49 CFR Part 26.27): Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must also encourage prime contractors to use these DBE financial institutions.

Discussion: During this compliance review, deficiencies were found with this requirement. RIDOT's DBE Program Plan states,

It is the policy of the RIDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

The State of Rhode Island currently has no Minority-Owned Financial Institutions. However, RIDOT's specific efforts to locate and inform these institutions of opportunities and to link them with the contracting industry have been on-going.

The review team researched several banking websites confirming RIDOT's assertion that there are no banks owned by socially and economically disadvantaged individuals in Rhode Island. This research identified two such banks based in Massachusetts. RIDOT previously sought a business relationship with one of the two Massachusetts-based banks, but according to RIDOT, the bank was not interested in a relationship since it preferred a larger and continuous stream of financial transactions. RIDOT was unable

² Ms. Peterson works in the RI Department of Administration overseeing the Uniform Certification Program (UCP) for the state; RIDOT pays her salary.

provide the review team any correspondence documenting that interaction, of efforts to work with the second Massachusetts-based bank (or other banks), of efforts to revisit discussions with the first Massachusetts-based bank, or that it had conducted any further research into the existence of other DBE financial institutions. Finally, RIDOT was unable to any evidence that it encourages its prime contractors to themselves use DBE financial institutions.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must redouble efforts to use banks owned by socially and economically disadvantaged individuals and keep records of such interactions. RIDOT must implement a process to annually assess the availability of such financial institutions and maintain a list of such financial institutions. RIDOT must provide this list to its prime contractors and encourage them to pursue banking relationships with DBE financial institutions. RIDOT must provide evidence of these activities to the FTA Office of Civil Rights.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31): A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion: During this compliance review, no deficiencies were found with this requirement. An advisory comment is made regarding the terms used on RIDOT's website directing interested parties to DBE information.

RIDOT's website provides links to DBE information through a "Doing Business with Us" [link](#), and a drop-down [link](#) entitled "Civil Rights/Mission 360." The same "Doing Business with Us" page includes a "Come do Business with Us" tab on the right side, with "Contractor and Consultants" [link](#). That page provides a [link](#) to the RI UCP DBE directory.

RIDOT's Civil Rights [page](#) has tabs listing four major program areas (ADA, Equal Employment Opportunity, On-the-Job-Training, and Title VI/Environmental Justice). Since DBE is a major program area, having a DBE tab would help first-time visitors to efficiently find the link to DBE information. The right side of the same page has a [link](#) to Mission 360, RIDOT's "program designed to level the playing field for the Rhode Island Disadvantaged Business Enterprises (DBEs) and foster equal opportunity in RIDOT projects."

The Mission 360 website has a top-level graphic, "Looking for a DBE." The graphic provides two links, "[DBEs Inside Mission 360](#)" and "[DBEs Outside Mission 360](#)." As of December 2015, the first link displays the names of fewer than 15 companies. The second link brings users to "RI Minority Business Enterprise and Disadvantaged Business Enterprise Directory Search." This directory/search engine also incorporates the RI UCP database; all certified DBEs are contained in this directory. The web page explains how to search the directory and references 49 CFR 26. The directory contains the required DBE information, including names, addresses, phone numbers, email addresses, websites, NAICS codes, and a description of products and services each DBE firm provides. RIDOA regularly updates this database.

Advisory Comment: RIDOT's website links covering DBE information are difficult to locate. It is an effective practice to prominently display DBE-related information and links and to give DBE program the same prominence as other civil rights programs. In addition, when using vendors to assist with DBE supportive services, it is an effective practice to ensure that their public information clearly explains distinctions between companies "inside" and "outside" such programs.

6.6 Overconcentration

Basic Requirement (49 CFR Part 26.33): The recipient must determine if DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, and then devise appropriate measures to address this overconcentration.

Discussion: During this compliance review, a deficiency was found because RIDOT was unable to demonstrate how it identifies or confirms the absence of overconcentration.

RIDOT's DBE Program Plan states,

RIDOT has not identified that overconcentration exists in the types of work that DBEs perform.

Pursuant to 26.33, when RIDOT determines that DBE firms are overconcentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate, or allow contracting opportunities for other DBEs in other available disciplines, RIDOT will take appropriate measures as specified in 26.33.

RIDOT will obtain approval from the concerned DOT operating administration regarding its determination and any measures to address it. Once approved, these measures will become part of the RIDOT DBE Program until the overconcentration is reduced."

RIDOT encourages fair and competitive participation on all US DOT-assisted contracts and will not discriminate against DBE or non-DBE firms.

While the Program Plan describes the actions RIDOT will take when it "determines that DBE firms are overconcentrated in certain types of work," RIDOT does not have a process in place to make such determinations with any regularity.

As discussed in Section 5.3, several DBE firms asserted that Portuguese-owned DBE firms receive more subcontractor work (typically concrete) than those owned by other socially and economically disadvantaged individuals, although the review team could not confirm this assertion. See Section 6.12 for a discussion of deficiencies related to certification standards.

Corrective Actions and Schedule Within 60 days of the issuance of the final report, RIDOT must develop a process for determining if overconcentration of companies in any particular industry area exist, and devise appropriate measures to address this overconcentration, if such conditions are uncovered. RIDOT must undertake this process periodically (at least each time it prepares its DBE goal). RIDOT must also update its program plan to explicitly state which measures cited in 49 CFR 26(b) that it might undertake to address overconcentration. RIDOT must provide the results of this assessment and updated DBE Program Plan language to the FTA Office of Civil Rights.

6.7 Business Development Programs

Basic Requirement (49 CFR Part 26.35): The recipient may or must (upon FTA's direction) establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion: During this compliance review, deficiencies were found with RIDOT's implementation of its required DBE BDP.

FHWA and FTA jointly required RIDOT to develop a BDP, which RIDOT developed, and FHWA and FTA jointly approved in July 2012. RIDOT's "Fostering Small Business Participation" document includes the following mission statement:

To encourage participation and competition among very small businesses in the U.S. Department of Transportation-funded procurement activities and to ensure that these businesses have an equal opportunity to provide goods and services to RIDOT.

RIDOT established this as a Very Small Business Program (VSBP), a key element of which is its DBE supportive services contract with Turino. (See Section 6.8 Subsection C – Race-Neutral DBE Participation.) As part of the VSBP, RIDOT also planned to advertise six FTA-funded projects totaling \$1.2 million:

1. Rose Island Lighthouse, Newport (\$330,000)
2. Woonasquatucket River Heritage Trail, Providence (\$190,000)
3. Smith's Castle, North Kingstown (\$180,000)
4. Cranston Street Enhancements, Cranston (\$120,000)
5. Pomham Rocks Lighthouse, East Providence (\$100,000)
6. Kingston Railroad Museum, South Kingstown (\$280,000)

As of December 2015, RIDOT has not advertised any of these projects, and explained that funding shortfalls, other project priorities, and internal staffing and other agency issues were to blame.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must reassess its VSBP and determine if it remains a viable BDP. If yes, it must revise the document with an updated list of projects and make every effort to award the projects to very small businesses consistent with the BDP. RIDOT must submit the revised plan to the FTA Office of Civil Rights and regularly report on progress in awarding future projects.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45): To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

Discussion: During this compliance review, deficiencies were found with this requirement with respect to RIDOT not including FTA funds for the Pilgrim Partnership in its list of FTA commitments. No deficiencies were found with RIDOT's goal calculation methodology.

The review team examined RIDOT's revised FY 2015–2017 goal calculation methodology as well as its FY 2011–2014 submission. RIDOT's proposed overall FY 2015–2017 DBE goal is 1.8 percent and includes the following FTA-funded awards:

- Liability insurance
- Providence Station Transit Center
- Structure over Pawtucket Layover Inspection Facility
- Providence Station Plaza
- Pawtucket Layover Fueling/Sanding Facility
- South Attleboro Station Improvements

- Providence Exchange Street Enhancements
- Rail Shuttle Equipment Rehabilitation

The following FTA-approved DBE goal documentation explains RIDOT's goal-setting methodology:

Step One

RIDOT identified FTA-funded projects planned for FFY 2015–2017 and estimated the amount of Federal funds required for each project. The estimated amount for the projects identified totaled \$23,427,310. Of this total \$6,627,310 or 28.3% is for planned architectural & engineering projects. The remaining \$16,800,000 or 71.7% is for construction projects. RIDOT then determined the scopes of work for each project and estimated the cost for each phase of the project (for example preliminary engineering, traffic counts, asphalt paving, etc.). Using the Census Bureau website information on NAICS code definitions RIDOT assigned a code to each phase of work identified.

RIDOT determined Southern New England (Rhode Island, Connecticut and Massachusetts) as the local market area since 75% of all RIDOT vendors are based in this area. RIDOT then researched the most recent available County Business Patterns (2012, published in 2015) for this market area to determine the total number of firms available by NAICS code to perform the scopes of work on FTA funded projects. To determine the number of Ready, Willing and Able (RWA) DBE Firms RIDOT used the Rhode Island Minority Business Enterprise and Disadvantaged Business Enterprise Directory [³] published by RI's Office of Minority Business Enterprise. This directory lists each RI Certified MBE and DBE firm and the NAICS codes associated with each firm. To develop the base figure for availability of RWA DBE Firms RIDOT divided the number of DBE firms by the total number of firms.

After determining the relative DBE availability for each NAICS code RIDOT multiplied that number by the weighted percentage of estimated federal dollars for each phase of work. RIDOT then totaled all these calculations and multiplied the total by 100. The use of this method resulted in a base DBE goal of 1.8%.

Step Two

RIDOT examined other evidence for determination of availability and adjustments. RIDOT has not conducted a disparity study. RIDOT has searched the State of Rhode Island and has found that no disparity study exists pertaining to the transportation industry.

RIDOT sought additional evidence in related fields within its jurisdiction that may affect opportunities for DBEs to form, grow, and compete, such as statistical disparities for DBEs to obtain financing, bonding, insurance, employment, education and training. RIDOT's search produced no relative evidence in this area.

Based on the search for available data, we found no demonstrable evidence that logically or directly impacts any significant areas affecting DBE participation. Therefore, RIDOT seeks no adjustments and has set an overall Tri-Annual goal of 1.8%.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must develop a procedure to ensure that it considers *all* contracting opportunities (including Pilgrim Partnership funding) in its triennial goal and must revise its DBE goal calculations accordingly. RIDOT must submit the revised procedure and its updated goal methodology to the FTA Office of Civil Rights.

³ This directory includes DBE firms certified through Rhode Island's UCP and includes DBE status and NAICS codes.

B) Public Participation

Basic Requirement (49 CFR Part 26.45): In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion: During this compliance review, no deficiencies were found with this requirement. RIDOT describes its consultation process in its DBE Program Plan and in its DBE goal submissions to FTA, stating:

Each year RIDOT holds a forum for interested stakeholders concerning the DBE Goal methodology consistent with the USDOT guidance to obtain feedback from as many interested stakeholders as possible. This year the RI Procurement Technical Asst. Center (RIPTAC) hosted a statewide DBE/MBE Forum. RIDOT chose to take advantage of this wide audience and included information about the goal setting process, and was available to take questions after our presentation of upcoming projects. This forum was held on April 9th 2014. Specifically, we presented our upcoming projects, discussed our data sources and how they are used in calculating the goal. RIDOT also discussed the reliability of the data collected and the scope of work for our current DBE Supportive Services contract and other initiatives in support of the National DBE Action Plan.

RIDOT received no substantive feedback or comments from interested stakeholders concerning the goal setting methodology and the proposed goal. Approximately 75 people were in attendance, including governmental partners, (SBA, RI Purchasing Office, RI MBE/DBE Certification Office) construction prime contractors, material suppliers, professional services providers, DBEs, subcontractors, members of the Rhode Island Minority Contractors Association, members of the Construction Industries of Rhode Island (a trade association), and Rhode Island Consulting Engineers.

Every three years prior to the Tri-Annual Goal implementation period, a public notice announcing RIDOT's proposed overall Tri-Annual DBE goal will be published in the Providence Journal (see Figure 2), and/or other minority publications informing the public that the proposed goal and the basis for its rationale are available for inspection for 30 days following the date of the notice. This same notice notifies the public that RIDOT and the Federal Transit Administration (FTA) will accept comments on the goals for 45 days from the date of the notice. The same notice is placed on the RIDOT's website www.dot.ri.gov.

The 45-day comment period for RIDOT's FFY 2015–2017 DBE goal began on July 21, 2014. RIDOT did not receive any comments before or during this period of time or requests to review the goal setting methodology. The period to submit comments closed on September 3, 2014.

RIDOT publishes its DBE goal on its website and via advertisement in the Providence Journal. The review team confirmed that the goal is on RIDOT's website and reviewed a copy of the newspaper advertisement, which is also included in the aforementioned goal submission to FTA.

See a discussion of RIDOT's small and disadvantaged business outreach activities in Section 6.7.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51): The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

Discussion: During this compliance review, no deficiencies were found with the requirement related to race-neutral DBE participation. RIDOT's race-neutral goal for FY 2015–2017 is 0 percent.

Race-Neutral DBE Participation

According to RIDOT's FTA FY 2015–2017 Goal Setting Methodology (Revised 6/15/15),

RIDOT determined its race-conscious/race-neutral division based on past DBE participation using award/commitment information for the 3-year period from FFYs 2012 to 2014. These data were evaluated to determine the extent that the race conscious goal was exceeded in each fiscal year. The amount committed to DBE firms in FFYs 2012 and 2013 did not meet the race conscious goal set for those years (7.9%). The 7.9% race conscious goal was exceeded in FFY [2012] when commitments equated to 12.4% of the total commitments, exceeding the goal by 4.5 percentage points. RIDOT's estimate of the maximum feasible portion of the goal achievable through RN participation is based on past participation and is supported by the race-neutral attainment.

RIDOT has projected the race-neutral (RN) portion of its 1.8% overall goal to be 0.0%. It is projected that the remaining overall goal will be achieved through race-conscious (RC) participation. RIDOT determined its median RN participation based on the data shown in the table below.

RIDOT determined its race-neutral/race-conscious division based on past DBE participation using payment information for the 5-year period from FFY 2006–2010. This data was based on prime contracts awarded to DBEs, the extent of DBE participation on contracts without goals, and DBE participation in excess of goals. RIDOT's estimate of the maximum feasible portion of the goal achievable through RN participation is based on past participation and is supported by the race-neutral measures noted below.

RIDOT has projected the race-neutral (RN) portion of its 1.8% overall goal to be 0.00%. It is projected that the remaining 1.8% of the overall goal will be achieved through race-conscious (RC) participation.

	FY 2012	FY 2013	FY 2014
Total Commitments	\$4,074,801.80	\$4,543,549.92	\$1,825,149.11
DBE Commitments	\$505,494.48	\$204,914.81	\$-
Approved 3-Year Goal	7.9%	7.9%	7.9%
Actual DBE Percent Committed	12.4%	4.5%	0.0%
Committed Percent above Goal	4.5%	-3.4%	-7.9%
Median Participation in Excess of RC Goal: 4.5% + 0.0% (Median) + 0.0% = 0.0%			

As the median participation (FFY 2013) failed to exceed the 7.9% race conscious goal, there [is] no evidence to support a projection of race neutral participation in the coming year(s).

Small Business Element

RIDOT's FTA FY 2015–2017 Goal Setting Methodology (Revised 6/15/15), provides the following discussion regarding RIDOT's race-neutral measures.

DBE Supportive Services

RIDOT's DBE/SS Program is managed by RIDOT under agreement with our consultant, Turino Group, to carry out the DBE/SS Program. As part of the current scope of work, Turino Group is assisting RIDOT in increasing participation in, and stabilizing the performance of underutilized Disadvantaged Business Enterprises, as well as other emerging and small businesses that are currently performing or have the potential of performing RIDOT transportation related work. Current services available to all small businesses through RIDOT include the following:

- How to do Business with RIDOT Brochure (in print, electronic and Power Point)
- How to Bid on a RIDOT Contract Brochure (in print, electronic and Power Point)
- How to use Quest Lite Brochure (in print, electronic and Power Point)
- Online posting of all available bidding opportunities
- Online posting and contract bid submission documents through RIVIP
- All Bid documents contained on CD for each Bid (Contract documents, plans,
- State/Federal Contract Provisions, RIDOT Standards and Specifications Blue Book)
- Online questions and answers posting by bid
- Online posting of plan holders list.
- Contract Bidding all Electronic including live remote bid opening
- Online posting of Bid tabulations

The review team confirmed that these services are available to all RIDOT bidders, including small businesses, through its “Doing Business” [page](#) and through its Project Management Portal [website](#).

The supportive services program (see Attachment C) contains numerous elements to support and develop small business and DBEs. Based on its discussions with stakeholders and examination of Turino Group’s Mission 360 materials however, the program appears more heavily focused on MWBE firms than on DBEs, although some MWBEs are also DBEs. (See discussion in the next subsection.) As discussed in Section 6.7, RIDOT’s has not awarded any FTA-funded VSBP projects despite a 2012 commitment to do so.

D) Race-Conscious DBE Participation

Basic Requirement (49 CFR Part 26.51): The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

Discussion: During this compliance review, no deficiencies were found with RIDOT’s race-conscious (RC) DBE participation goal-setting methodology. An advisory comment is made regarding RIDOT’s targeted outreach activities to DBE firms.

RIDOT stated that before advancing an FTA-project or study, Senior EEO Compliance Officer Jean Heiss analyzes the scope of work and DBE firm availability (by NAICS code) to determine how much of the work DBE firms can provide, and establishes the DBE goal. RIDOT includes that goal in bid advertisements and RFPs and reviews submissions for responsiveness. The review team examined submissions for the following projects:

- Pawtucket-Central Falls Study (FTA funding) – 10 percent DBE goal
- Wickford Junction (FTA funding) – 5 percent DBE goal

The bid/RFP documents specified RIDOT’s DBE goal requirements and bids/submissions included responsive DBE participation documents.

As discussed in the subsection immediately above, RIDOT’s FTA FY 2015–2017 Goal Setting Methodology (revised 6/15/15) projected that it will achieve its entire 1.8 percent DBE goal through RC participation.

Per 49 CFR 26.5, a “race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.” In order to achieve the goal, RIDOT’s RC program must specifically assist only DBEs. In RIDOT’s instance, this includes:

- Targeting outreach activities to DBEs
- Referring DBE firms to the Turino Group

- Regularly meeting with external partners such as chambers of commerce representing Women, Hispanics, Blacks, and other minority groups
- Regularly meeting with minority and women contractor associations
- Fostering mentor/protégé relationships
- Analyzing DBE firm capabilities for targeted assistance

While the scope of work for RIDOT's supportive services contract with Turino Group includes tasks to accomplish many of these activities, several stakeholders the review team interviewed characterized RIDOT's outreach via the Turino Group as focused on MWBEs rather than on DBEs. While documents the review team examined such as meeting notices and agendas mention both the DBE and MWBE programs, both RIDOT staff and the aforementioned stakeholders characterized the MWBE program offerings as significantly more robust. The limited number of advertised FTA DBE contract opportunities compared to FHWA-funded and locally funded projects may contribute to a lower awareness and public profile of RIDOT's FTA-funded DBE projects. To achieve its stated RC goals, RIDOT's supportive services activities (particularly outreach) for this triennial period must target DBEs.

Advisory Comments: To meet RC DBE goals, it is an effective practice to firmly commit to a schedule of DBE contracting project advertisements. It is also an effective practice to emphasize RC goals in outreach activities and to focus outreach activities on DBE firms.

E) Good Faith Efforts

Basic Requirement (49 CFR Part 26.53): The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract, a description of the work each DBE will perform, the dollar amount of DBE participation, written commitment to use the DBE submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

Discussion: During this compliance review, no deficiencies were found with this requirement. RIDOT's DBE Program Plan (page 12) specifies the GFEs required of prime contractors; RIDOT uses the responsiveness approach and requires bidders to complete nine forms describing:

1. Contact information for all firms contacted for subcontracting opportunity
2. A telephone log of all outreach efforts
3. Type of and amount of work requested from DBE firms
4. Quotes from DBE and non-DBE firms that were subsequently rejected by primes due to quoted prices determined as beyond budget levels
5. Names and dates of publications where ads were placed to seek out DBE participation
6. Names and contacts of local agencies contacted and used to source DBEs
7. DBEs that were assisted to develop responses to contract opportunities
8. DBEs assisted in obtaining financial support to participate in the contracting opportunity
9. Any additional data that demonstrates good faith effort.

The same section of the DBE Program Plan (page 13) describes RIDOT's administrative reconsideration process:

Within 10 days of being informed by RIDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative

reconsideration. Bidder/offerors should make this request in writing to [RIDOT's Administrator of the Office of Business and Community Resources].

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. RIDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

The review team examined RIDOT's files for the Federally funded projects listed in the previous section and confirmed that the RFPs required implementation of GFEs. Each contract included DBE subcontractors and had DBE participation levels that met RIDOT's pre-bid goal.

F) Protecting Against Termination for Convenience

Basic Requirements (49 CFR 26.53 and 26.13): Recipients must implement mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform work of the terminated subcontractor with its own forces or those of an affiliate, or reducing the scope of the DBE contract) without the recipient's prior written consent. Failure to obtain written consent is a material breach of contract.

Discussion: During this compliance review, a deficiency was found with this requirement.

49 CFR 26.53(f)(1)(i) states,

You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

RIDOT's DBE Special Provisions document (see Attachment D) includes a section titled "DBE Replacement and Termination," and outlines the steps prime contractors must follow based on 49 CFR 26.53, stating,

A Prime must provide the Department's OBCR with a copy of its "Intent to Substitute/Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

However, as discussed in Section 5.3, one DBE firm (Firm A) the review team interviewed described his experience being replaced by another DBE subcontractor on a construction contract. The issue in this instance related to the prime contractor with an ownership interest in a concrete plant that required Firm A to purchase concrete from that plant. Due to the long distance between the concrete plant and the project site, Firm A was put in a position of procuring concrete that was rendered nearly unsuitable. Although Firm A was able to effectively utilize the concrete, he felt the task was inordinately difficult based on the condition of the concrete. He asked for a meeting with RIDOT and the prime contractor to address concerns about the project. According to Firm A, the prime asserted that a second DBE subcontractor could perform the work without objection to the prime's requirements. In the meeting,

RIDOT allowed the prime contractor to replace the Firm A. According to Firm A, neither RIDOT nor the prime contractor provided him with a copy of the required “Intent to Substitute/Terminate” notice.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must train employees involved in any activities involving termination or substitution of DBE firms to follow required procedures, including documentation and recordkeeping. RIDOT must provide examples of internal policy memos describing these safeguards to the FTA Office of Civil Rights.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55): The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder’s submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders are only counting work performed by the DBE’s own forces in accordance with the DBE requirements.

Discussion: During this compliance review, deficiencies were found with how RIDOT counts actual work performed by DBEs. Based on its examination of contract files and interviews with RIDOT, the review team found inconsistencies with respect to RIDOT’s recordkeeping and with its commercially useful function (CUF) reviews.

Counting Participation Toward DBE Goals

According to 49 CFR 26.55(a):

When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE’s own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

RIDOT provided the review team with copies of standard DBE participation documents it uses. This included, for example, DBE participation/verification forms for the FHWA-funded West Davisville Road Interchange project. Documents for this project were extensive and contained monthly reports showing the work DBEs performed compared with their subcontracted amounts.

RIDOT also provided the review team with an MBTA-generated monthly DBE participation report for the FTA-funded Pawtucket Layover facility project, which the MBTA managed. This report contained the project name and number, contractor name, award amount, list of subcontractors and trades, including DBEs, subcontractor award amounts, notations for subcontractor supplies that are adjusted, prior payments, and payments that month and to date. The form tracks DBE participation in relation to the contract goal.

The RIDOT-managed and FTA-funded Wickford Station project the review team examined did not contain detailed monthly documentation. When asked about the missing information, RIDOT staff explained that they reconciled and counted DBE participation at the end of the project. This is a deficiency.

Commercially Useful Function (CUF) Reviews

RIDOT's DBE Program plan discusses CUF reviews on page 11 under Compliance Monitoring and Enforcement. (See the Section 6.11 discussion of enforcement in Subsection B – Prompt Payment.) Based on the contracts the review team was able to examine, RIDOT appears to collect the monthly progress payment certifications from prime contractors. However, RIDOT does not consistently implement CUF reviews to verify that DBEs are actually delivering functional value, and that the companies are legitimate enterprises. When asked about the CUF reviews referenced in its DBE Program Plan, RIDOT staff seemed unfamiliar with them. They explained that they investigate payment issues only after receiving complaints from DBE subcontractors.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must apply the same methods to FTA-funded projects, including CUF reviews, as it uses to track DBE participation on FHWA-funded projects. RIDOT must provide copies of DBE participation records, including CUF reviews, to the FTA Office of Civil Rights.

H) Quotas

Basic Requirement (49 CFR Part 26.43): The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

Discussion: During this compliance review, no deficiencies were found with this requirement. There was no indication that RIDOT has engaged in the practice of establishing quotas for DBE participation.

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47): The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

Discussion: During this compliance review, deficiencies were found with RIDOT's shortfall analysis reporting and corrective actions.

RIDOT's DBE goal for FY 2012–2014 was 7.9 percent. Table 6-1 compares total commitments, DBE commitments, and percentages for each of these fiscal years. As shown, RIDOT exceeded its goal in FY 2012, fell below its goal in FY 2013, and had no DBE commitments in FY 2014. According to Vanessa Crum, FTA directed RIDOT to add its FTA-funded liability insurance contract to its DBE commitments. The inclusion of this contract, valued at just under \$1.8 million per year, is one reason that RIDOT's DBE goal decreased from 7.9 percent (FY 2012–2014) to 1.8 percent (FY 2015–2017).

Table 6-1 – RIDOT DBE Goals and Commitments FY 2012–2014

	FY 2012	FY 2013	FY 2014
Total commitments	\$4,074,802	\$4,543,550	\$1,825,149
DBE commitments	\$505,494	\$204,915	\$0
Approved 3-year goal	7.9%		
Actual DBE percent committed	12.4%	4.5%	0%

Source: DBE Goal Methodology (FY 2015–2017) (revised 6.15.15)

RIDOT's DBE Program Plan (page 25) states:

If the awards and commitments shown on RIDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, RIDOT must do the following in order to be regarded by the USDOT as implementing the DBE program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in our analysis and to enable us to meet fully our goal for the new fiscal year;
- (3) RIDOT must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) of this section to [FTA] for approval. If [FTA] approves the report, RIDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must conduct shortfall analyses for FY 2012 and FY 2013 and any later years for which it did not meet its DBE goal. RIDOT must also create a process to ensure it completes its required shortfall analyses within 90 days after each FY ends. RIDOT must submit any outstanding shortfall analyses and provide internal policy memos describing its process changes to the FTA Office of Civil Rights.

6.10 Transit Vehicle Manufacturers (TVMs)

Basic Requirement (49 CFR Part 26.49): The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

Discussion: During this compliance review, no deficiencies were found with this requirement. RIDOT does not purchase transit vehicles, which it confirmed in its response to FTA's notification letter information request. RIPTA, an FTA grantee, operates fixed route bus and complementary paratransit in Rhode Island and directly manages its transit vehicle procurements.

6.11 Required Contract Provisions

A) Contract Assurance

Basic Requirement (49 CFR Part 26.13): Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include a nondiscrimination clause detailed by the DBE regulations.

Discussion: During this compliance review, no deficiencies were found with this requirement.

RIDOT's DBE Special Provisions document (see Attachment D) requires prime contractors to submit copies of subcontractor agreements to RIDOT, stating:

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the RIDOT Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

B) Prompt Payment

Basic Requirement (49 CFR Part 26.29): The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed. The recipient must provide appropriate means to enforce this requirement, which may include appropriate penalties for failure to comply.

Discussion: During this compliance review, deficiencies were found with the implementation of RIDOT's enforcement of payment provisions and the return of retainage payments. No deficiencies were found with RIDOT's contract clauses covering subcontractor payments and return of retainage payments.

Subcontractor Payments

RIDOT provided the review team with its standard contract terms with respect to prompt payment. Section 109.12 covers subcontractor prompt payment and requires prime contractors to make prompt payments "for satisfactory contract work for which [RIDOT] has made partial or full payment." The same section includes provisions for subcontractors to file complaints to RIDOT if they have not been paid within 30 days of RIDOT paying prime contractors.

RIDOT's DBE Special Provisions document also requires prime contractors to maintain records of subcontractor payments with monthly reporting to RIDOT as follows:

C. Monthly Payment Certifications:

The Contractor shall provide monthly payment certification to the Department entitled "Certification of Progress Payment" Form.

The Department shall provide the Contractor with the certification form as part of our electronic reporting software. The contractor is responsible for their subcontractors' compliance with the submission of their payment reporting by way of this software.⁴

Return of Retainage Payments

RIDOT's DBE Special Provisions document contains the following appropriate language covering the release of retainage payments:

FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the resident engineer certification of the dollars paid to each DBE firm, using Form "DBE Request for Verification of Payment". The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in sanctions listed in Section I.C. and I.D. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OBCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate

⁴ See the discussion in Subsection C (Legal Remedies) regarding RIDOT's new electronic reporting system.

documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and the subcontractor on the Certification of Progress Payment Form, the Prime Contractor shall release all retainage held by the Prime Contractor, within 30 days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

Enforcement

49 CFR 29(d) states:

Your DBE program must provide appropriate means to enforce the requirements of this section. These means you may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

RIDOT's DBE Program Plan (page 11) contains the following language under Compliance Monitoring and Enforcement:

The Office of Business and Community Resources (OBCR) is committed to performing regular project site visits and compliance reviews of participating contractors. With respect to DBE compliance monitoring and enforcement, commercially useful function reviews shall be conducted regarding the distinct elements of work under each approved DBE contract and subcontract (See Attachment C & E). This element is part of a broader effort to ensure that contractors comply with all federal-aid contract provisions promulgated through the regulations at 23 CFR 230, Appendix A of Subpart C, Part I.

While this commitment is consistent with the regulations, RIDOT's actual implementation of DBE enforcement mechanisms is at issue. As discussed in Section 6.8 Subsection G – Counting DBE Participation, based on the contracts the review team was able to examine, RIDOT appears to collect the monthly progress payment certifications from prime contractors. However, RIDOT does not consistently implement commercially useful function (CUF) reviews to verify that DBEs are actually delivering functional value, and that the companies are legitimate enterprises. The CUF process also allows agencies to determine that DBEs receive payment within 30 days of completing, and then invoicing for their work elements, or within 30 days of prime contractors receiving progress payments.

When asked about the commercially useful function (CUF) referenced in its DBE Program Plan, RIDOT staff seemed unfamiliar with them. They explained that they investigate DBE payment issues only after receiving complaints from DBEs.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must begin implementing appropriate mechanisms to ensure compliance, including ongoing monitoring of DBE payments on all FTA-funded contracts. RIDOT must provide records (e.g., copies of checks) from recent FTA-funded projects such as Wickford Junction showing actual payments to DBEs. RIDOT must provide evidence of ongoing DBE payment monitoring to the FTA Office of Civil Rights.

C) Legal Remedies

Basic Requirements (49 CFR Part 26.37): Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

Discussion: During this compliance review, deficiencies were found with the implementation of RIDOT's DBE monitoring and enforcement mechanisms.

49 CFR Part 26.37 states,

- (a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.
- (b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
- (c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

Ensuring Compliance

RIDOT's DBE Special Provisions document contains the following appropriate language covering legal remedies, stating:

Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department of such remedy as the Department deems appropriate.

According to RIDOT staff, RIDOT has not terminated any contractors or pursued any remedies related to compliance with the DOT DBE regulations.

Monitoring and Enforcement Mechanisms

The DBE Program Plan lays out a thorough process for monitoring compliance and enforcing the requirements:

Monitoring and Enforcement Mechanisms

The RIDOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. RIDOT will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. RIDOT will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment K lists the regulation, provisions, and contract remedies available to RIDOT in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. RIDOT will also provide a monitoring and enforcement mechanism to verify that work committed to DBE at contract award is actually performed by the DBE. This will be

accomplished by use of the CUF form with certification by the compliance officer performing the CUF review. (See Attachment E)

4. RIDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

RIDOT uses a civil rights software program to track and monitor performance of work done by subcontractors. Payments to subcontractors are also tracked and monitored this way. The software analyzes data by both payments and commitments, giving RIDOT a view of its overall goal and DBE program. This new web based Software interfaces with our Oracle Financial Management System and the Project Management Portal.

This software will be made available to all of RIDOT's subrecipients for their reporting requirements to RIDOT.

RIDOT regularly monitors invoice payments on FTA-funded projects for the purposes of crediting DBE participation in comparison with contract goals. RIDOT provided the review team with such evidence for the Wickford Junction project, documented in a series of interoffice memoranda. While these documents showed prime contractor-reported payments, they did not include evidence of prompt payments to DBE subcontractors. The files did not contain evidence of any CUF reviews.

RIDOT has been implementing computer program upgrades to address recordkeeping deficiencies. The first is a new management system (PRISM), cited above in the Special Provisions document, which is designed to track contract information from bid through project completion. The second is an Excel spreadsheet for compliance tracking, which [now] Acting Civil Rights Division Administrator Paul Sylvia showed the review team. The interactive spreadsheet includes hyperlinks to electronic files for compliance staff, resident engineers, the DBELO, and procurement staff to share.

Dave Chandler, FHWA Region I Program Administrator, provided RIDOT input to the spreadsheet's design so the information would support meeting the DOT DBE requirements. At the time of the site visit, the spreadsheet only listed FHWA-funded projects; RIDOT planned to add FTA-funded projects. Upon full implementation of both the spreadsheet program and the PRISM database, RIDOT expects to be able to address many of the monitoring and reporting issues discussed in this report.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must ensure that its procedures and systems ensure compliance. RIDOT must monitor its FTA-funded projects regularly and produce monthly reports, and apply legal remedies when a breach of contract is indicated. RIDOT must perform CUF reviews on all FTA-funded construction projects and maintain records of site visits. RIDOT must provide FTA with copies of monitoring reports generated by its new software tools as well as copies of completed CUF reports. RIDOT must submit these documents to the FTA Office of Civil Rights.

6.12 Certification Standards

Basic Requirements (49 CFR Parts 26.67–26.71): The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

Discussion: During this compliance review, deficiencies were found with this requirement with respect to the categories RIDOT uses. No deficiencies were found with the overall certification process or documentation requirements.

49 CFR 26.5 states:

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

The RI Department of Administration (RIDOA) oversees minority, women, and disadvantaged business enterprise certification activities in the state, including the Uniform Certification Program (UCP) for RIDOT, the Rhode Island Public Transit Authority (RIPTA), and the Rhode Island Airport Corporation (RIAC). These agencies are parties to a Memorandum of Understanding (MOU) governing compliance with the UCP requirements. Ms. Patsy Peterson, Senior External Equal Opportunity Officer, manages the UCP program and RIDOT pays her salary. Ms. Peterson also certifies vendors for Rhode Island's Minority/Women Business Enterprise (MWBE) program. Ms. Peterson properly distinguishes between the DBE and MWBE programs. MWBE entities must separately apply for DBE certification. RIDOA DBE and MWBE data are in a Microsoft Access database, which they update daily. This database is accessible online.

Table 6-2 summarizes the designations RIDOA (and RIDOT) use. The review team examined the DBE directory, which uses the same definitions listed in the table. RIDOA's directory definitions are incorrect as follows:

- The Hispanic Americans definition needs to be changed to include Dominican and to include Portuguese, which is incorrectly listed separately

- The Native Americans definition needs to be revised
- The Asian-American definition needs to be split into two (Asian-Pacific and Subcontinent Asian)
- The reference to SBA-based other groups needs to be revised

Table 6-2 – Minority and Women Business Enterprise Category Definitions

Category	Definitions
Black	All persons having origins in any of the Black racial groups of Africa.
Hispanic	All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
American Indian/Alaskan Native	All persons having origins in any of the original peoples of North America.
Asian American	All persons having origins in any of the original peoples of the Far East, Southeast, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
Portuguese	All persons of Portuguese, Brazilian or other Portuguese culture or origin regardless of race.
Women	Any female qualifies as a class of minority.
Disadvantaged	Members of other groups or other individuals, found to be economically and socially disadvantaged by the small Business Administration under Section 8 (a) of the Small business Act, as amended (15 U.S.C. Chapter 637 (a)).

Corrective Actions and Schedule: RIDOA must revise its definitions for socially and economically disadvantaged individuals to be consistent with the DOT DBE regulations and must use the correct categories in its directory. RIDOT must also use the same categories when tracking DBE participation in its project tracking and other record keeping activities. RIDOT must provide evidence that RIDOA has implemented these changes to the FTA Office of Civil Rights.

6.13 Certification Procedures

A) Onsite Visits and Document Review

Basic Requirement (49 CFR Part 26.83): The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

Discussion: During this compliance review, no deficiencies were found with this requirement.

Ms. Peterson is responsible for DBE certifications and is responsible for conducting site visits to every RI-based DBE entity, maintaining certification files, and uploading certified DBE information into the DBE directory.

When RIDOA receives completed in-state DBE applications, they schedule a site visit. Out-of-state visits take place in limited circumstances when necessary. The process allows meetings with applicants to include any needed support staff. RIDOA reviews all relevant corporate documents and asks questions about the business's history, daily management, payroll, licenses, and industry experience. The Certification Review Committee (CRC) reviews and votes on the full package after site visits during its monthly meetings; votes are majority rule.

The review team examined four randomly selected RIDOA certification folders:

1. Global Supplier Diversity Corporation, Orrville, OH
2. Guwoe Home Improvement & Remodeling Co., Providence, RI
3. Karriem Kanston/dba Kanston Development, Providence, RI
4. Iron Lady Enterprises Inc., Philadelphia, PA

Each file the review team examined contained the required documents, included a site visit report for the two RI-based firms, and included requisite company owner information. Documentation included assignment of appropriate NAICS codes, notarized PNW statements, including accounting of assets and liabilities, business and personal tax returns, “No Change” affidavits for each certification maintenance/update year, and validation of eligible size standards for the relevant industry group.

In examining RIDOA’s certification filing system and directory, the review team verified that documents were completed and signed.

B) Annual Affidavit

Basic Requirement (49 CFR Part 83): DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

Discussion: During this compliance review, no deficiencies were found with this requirement. An advisory comment is made regarding verifying the statements DBE firms make.

Certifications do not expire. RIDOA conducts site visits on a rotating basis, every 3–5 years. At the time of the site visit, RIDOA had 438 certified DBE firms.

RIDOA requires DBE firms to submit annual affidavits affirming their DBE status and requires them to also submit notarized PNW statements. RIDOA verifies these statements electronically.

In examining the PNW statements in the sample files, the review team identified one firm whose principals shared financial interest in properties located in neighborhoods with high real estate values. The affidavits appeared to understate their values.

Advisory Comment: When reviewing annual affidavits, it is an effective practice to ensure that property value statements reflect market conditions.

C) Interstate Certification

Basic Requirement (49 CFR 26.85): The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

Discussion: During this compliance review, no deficiencies were found with this requirement. As of November 2015, per the certification [website](#),

Out of state firms that are currently certified as a DBE and/or ACDBE by their home state UCP may seek certification as a DBE and/or ACDBE in Rhode Island. U.S. Department of Transportation DBE certification is valid for projects and contracts with the Rhode Island Department of Transportation (RIDOT), the Rhode Island Public Transit Authority (RIPTA), and the Rhode Island Airport Corporation (RIAC). Pursuant to 49 CFR 26.85(b), out of state DBE firms may request interstate certification by submitting the following:

1. Interstate DBE and ACDBE Certification Request Form
2. A copy of your home state UCP certification letter or certificate.
3. Copies of pertinent Rhode Island licenses, if operating in a licensed industry.

Ms. Peterson confirmed that out-of-state certified firms submitting the above information receive reciprocity from RIDOA. The files the review team examined included two non-RI DBE firms, both of which received RI DBE status based on their valid out-of-state DBE certifications.

D) Certification Appeals

Basic Requirement (49 CFR 26.86): The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

Discussion: During this compliance review, no deficiencies were found with this requirement. When denying certification applications or proposing removal of existing firms from its DBE directory, RIDOA communicates reasons for its decision in writing and explains the right to appeal the decision.

Certification review outcomes include approved, denied, or held for additional questions/review. RIDOA communicates in writing specific reasons for denials. Letters directly cite the DOT DBE regulations, grant the right to appeal the decision to the CRC for reconsideration, and if not satisfied with the outcome, to U.S. DOT. RIDOT also permits firms to reapply for certification.

RIDOT adds approved firms to its DBE database immediately after CRC approval. Decisions held for more information prompt RIDOT follow-up letters. Ms. Peterson stated that they follow-up several times with firms that do not promptly respond to its requests for more information and provide technical assistance when required.

When analysis of PNW statements or revenue data disqualifies a firm from DBE status, RIDOA notifies the firm in writing. In such instances, RIDOT provides the firm facing disqualification sufficient time to dispute RIDOA's analysis and submit documentation for reconsideration. RIDOA may remove firms found to have committed fraud but provides them an opportunity to provide additional information. Once the response window has closed, RIDOA prepares a written case for CRC review and determination. If upheld, RIDOA removes the firm from the DBE directory and notifies firms of the CRC's decision. These letters properly explain the right to appeal the CRC's decision for reconsideration and include the statement, "Be advised that you have the right to request an appeal of this decision to deny DBE certification by contacting the U.S. Department of Transportation Office of Civil Rights [address provided]."

Ms. Peterson provided the review team with templates RIDOA uses to communicate certification denials or decertifications. The letters properly explain the reasons for the denial and specifically reference evidence in the record to support the denial.

E) Record Keeping and Enforcements

Basic Requirements (49 CFR Parts 26.11 and 26.37): The recipient must provide to FTA data about its DBE program on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA Transit Award Management System (TrAMS) (formerly TEAM), unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close out reviews for contracts. Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion: During this compliance review, a number of deficiencies were found with these requirements.

Semi-Annual Uniform Reporting

As discussed earlier in this report, RIDOT has processes in place for tracking DBE awards and payments. RIDOT uses forms to record contract award amounts, including DBE awards, and includes these forms in its contract files. RIDOT uses separate forms to tallying DBE-related utilization by recording contractor-provided DBE payments. RIDOT reports this information to FTA in the Uniform Report of DBE Commitments/Awards and Payments. At the time of the site visit, RIDOT had been unable to upload semi-annual reports to TEAM in a timely manner. Staff explained difficulties in accessing the system and stated that they had been in communication with FTA to address the problem. Notwithstanding these problems, it does not appear that RIDOT prepared its reports for uploading on time; several were dated after they were due to FTA.

In addition, the following reports covering FY2012 to present were not in TEAM as of December 1, 2015:

- FY 2012 – Report due June 1
- FY 2015 – Reports due June 1 and December 1
- FY 2016 – Report due December 1

Note that beginning with FY 2015, FTA requires the reports to include a breakdown by ethnicity and gender.

DBE Minority Women, Non-minority Women, and Minority Men

49 CFR 26.11(e) states,

The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

At the time of the site visit, RIDOT had not provided this required information to DOT.

Compliance Monitoring

RIDOT's DBE Program Plan includes a commitment by the Office of Business and Community Resources to perform regular project site visits and compliance reviews of participating contractors, and to conduct CUF reviews. (See Section 6.8, Subsection G – Counting DBE Participation.) When asked about this provision, RIDOT representatives were unsure of CUF review completion status and could not produce any records of CUF reviews for FTA-funded projects.

Bidders List

RIDOT uses its shared DBE database to source contract vendors, which at the time of the site visit, contained 438 firms. In its RFPs and bid packages, RIDOT directs prime contractors to use the database, which lists company name, contact name, mailing and email addresses, telephone, fax, primary NAICS code, and other NAICS codes.

MBTA Subrecipient Monitoring

As discussed in Section 4.2, since 1988, RIDOT and the MBTA have maintained the Pilgrim Partnership for the MBTA to operate commuter rail service in Rhode Island. As such, the MBTA, an FTA grantee for

public transportation in Massachusetts, is also a RIDOT subrecipient. The 1988 agreement acknowledged that the bulk of the funding would come from RIDOT's UMTA [now FTA] grant and spells out the roles and responsibilities of each partner, and states, "Rhode Island as the recipient of an UMTA Capital Grant shall be responsible for compliance with grantee requirements..."

Notwithstanding any agreements, RIDOT is obligated to monitor the MBTA for compliance with the DOT DBE regulations related to commuter rail operations in Rhode Island.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, RIDOT must:

- Upload to TrAMS the June FY 2012, both FY 2015, and the December 2016 semi-annual Uniform Reports.
- Implement appropriate monitoring and reporting mechanisms to ensure implementation of its DBE Program Plan such as timely semi-annual reporting to FTA and tracking of CUF reviews.
- Report to FTA the percentage of DBE minority women, non-minority women, and minority men to the FTA by January 1, 2016.
- Enter into discussions with the MBTA to amend the Pilgrim Partnership agreement to require the MBTA to provide information to RIDOT on its compliance with the DOT DBE regulations and provide a copy of both the amended agreement and a plan to track subrecipient data to the FTA Office of Civil Rights.

7 Summary Table of Compliance Review Findings

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	1 deficiency	DBE Plan incorrectly identified DBELO and RIDOT Director (CEO), and included outdated organization chart	60/*
2.	Policy Statement	26.23	1 deficiency	DBE policy statement incorrectly identifies DBELO and RIDOT Director (CEO), and does not include CEO's signature	60/*
3.	DBE Liaison Officer	26.25	2 deficiencies	No permanently designated DBELO Inadequate staff resources to properly administer DBE program	60/*
4.	Financial Institutions	26.27	2 deficiencies	No documentation of past efforts to work with DBE financial institutions or any evidence of ongoing efforts No prior or ongoing efforts to encourage prime contractors to work with DBE financial institutions	60/*
5.	DBE Directory	26.31	No deficiencies 1 advisory comment		
6.	Overconcentration	26.33	1 deficiency	RIDOT was unable to demonstrate the presence or absence of overconcentration.	60/*
7.	Business Development Programs	26.35	1 deficiency	Despite an FTA/FHWA-approved BDP, RIDOTs has not awarded any projects through its very small business program (VSBP)	60/*

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
8.	Determining / Meeting Goals	See 88h below			
8a	Calculation	26.45	No deficiency		
8b	Public Participation	26.45	No deficiencies		
8c	Race-Neutral	26.51	No deficiencies		60/*
8d	Race-Conscious	26.51	No deficiencies 2 advisory comments		
8e	Good Faith Efforts	26.53	No deficiencies		
8f	Protecting Against Termination for Convenience	26.53 and 26.13	1 deficiency	RIDOT does not always follow its own procedures requiring written notification of pending terminations	60/*
8g	Counting DBE Participation	26.55	1 deficiency	RIDOT was not able to demonstrate proper tracking of DBE payments compared with DBE work completed on some FTA-funded projects in order to properly count DBE participation.	60/*
8h	Quotas	26.43	No deficiencies		
9.	Shortfall Analysis and Corrective Action Plan	26.47	1 deficiency	RIDOT did not produce or upload shortfall analysis reports to FTA's TEAM website per the required schedule.	60/*

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
10.	TVM	26.49	No deficiencies (not applicable)		
11.	Required Contract Provisions	See 11a-c below			
11a	Contract Assurance	26.13	No deficiencies		
11b	Prompt Payment	26.29	1 deficiency	While RIDOT appears to collect the monthly progress payment certifications from prime contractors, it does not consistently implement commercially useful function (CUF) reviews.	60/*
11c	Legal Remedies	26.37	1 deficiency	RIDOT's procedures for enforcing contract provisions are not effectively in place for FTA-funded projects.	60/*
12.	Certification Standards	26.67-26.71	1 deficiency	The Department of Administration, which manages the RI UCP program, uses incorrect group definitions for socially disadvantaged individuals.	60/*
13.	Certification Procedures		No deficiencies		
60/*	Onsite Visit	26.83	No deficiencies		
13b	Annual Affidavit	26.83	No deficiencies		

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
13c	Interstate Certification	26.85	No deficiencies		
13d	Certification Appeals	26.86	No deficiencies		
14.	Record Keeping and Enforcements	26.11 and 26.37	4 deficiencies	Semi-Annual missing from TrAMS and several were submitted late. Required reporting on percentage of DBE minority women, non-minority women, and minority men not provided Not implementing appropriate monitoring mechanisms to ensure overall compliance by all program participants consistent with its DBE Program Plan No provisions in place for subrecipient monitoring	60/*

*Date to be provided in Transmittal Letter

Attachment A
FTA Notification Letter to
RI Department of Transportation



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

June 26, 2015

Ms. Vera H. Querceto, Esq.
Senior Legal Counsel; Acting Administrator Civil Rights
Rhode Island Department of Transportation
2 Capitol Hill, Room 251
Providence, RI 02903

Dear Ms. Querceto:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Rhode Island Department of Transportation (RIDOT) has been selected for a review of its overall DBE program to take place Wednesday, Thursday and Friday August 12–14, 2015.

The purpose of this review will be to determine whether RIDOT is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of the Collaborative, Inc., of Boston, MA, to conduct this compliance review. The Collaborative team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled at **Wednesday, August 12, 2015 at 9:00 a.m.**, to introduce the Collaborative team and FTA representatives to RIDOT staff members. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. Please let us know if you will designate a member of your staff to serve as RIDOT's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Ms. Shakira Abdul-Ali
the Collaborative, Inc.
c/o 53 General Greene Avenue
Trenton, NJ 08618
609-271-3821
sabdul-ali@thecollaborative.com

We request the exit conference be scheduled for **Friday, August 14, 2015 at 2:00 p.m.**, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to RIDOT, will be considered public documents subject to release under the Freedom of Information Act, upon request.

RIDOT representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Brian Whitehead, Program Manager for this compliance review, at 202-366-3051 or via e-mail at brian.whitehead@dot.gov.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager for Policy & Technical Assistance

cc: Mary Beth Mello, FTA Region I Administrator
Margaret Griffin, FTA Region I Civil Rights Officer

Rhode Island Department of Transportation
Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

You must submit the following information to the [insert contractor name] contact person within 21 calendar days from the date of this letter.

1. Current DBE Program Plan (which should include RIDOT's organization chart).
2. Fiscal years (FYs) 2010, FY 2011 - FY 2013, and the FY 2014 goal methodology submissions.
3. Any ARRA reports for FY2011. The reviewers are able to access RIDOT's other ARRA and DBE semi-annual reports through FTA's TEAM system or as attachments to the TEAM recipient screen.
4. Current Memorandum of Understanding or similar documents for RIDOT's participation in the Unified Certification Program.
5. Any additional certification criteria/guidelines used by RIDOT in determining DBE eligibility, if applicable.
6. The identification of firms, if any, that have worked on RIDOT's projects and have graduated from RIDOT's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified as a DBE.
7. Information identifying FTA-funded contracts awarded during FY2011 to present by RIDOT and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
8. Good Faith Effort criteria established by RIDOT.
9. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
10. Small Business element as implemented by RIDOT
11. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the complete/executed contract between your agency and the transit vehicle manufacturer.

Rhode Island Department of Transportation
Disadvantaged Business Enterprise Program Compliance Review

12. FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
13. List the names of all transit vehicle manufacturers that submitted bids for the RFPs provided in response to Item 14.
14. Shortfall analysis and corrective action plan for the last three (3) years.
15. Names of interested parties (external organizations) with which RIDOT has interacted on the DBE program issues.
16. Any complaints received concerning RIDOT's DBE program over the past five (5) years.
17. The DBELO official position description.
18. Other pertinent information determined by RIDOT's staff to shed light on its DBE compliance efforts.

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Attachment B
DBE Program Plan

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Definitions and Terms

The Rhode Island Department of Transportation will adopt the definitions contained in Section 26.5 for this program.

Affiliation - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the **DBE** program.

Alaska Native - a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) - any Regional Corporation, Village Corporation, Urban Corporation or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Broker- for purposes of this program, a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

Compliance - that a recipient has correctly implemented the requirements of "49 CFR §26"

Contract - a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this program, a lease is considered to be a contract.

Contractor - one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT - the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).

Disadvantaged business enterprise or DBE - a for-profit small business concern –

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract - any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU - refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

EEO- Equal Employment Opportunity

Good faith efforts - efforts to achieve a **DBE** goal or other requirement of this program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home State- means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member - father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe - any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture - an association of a **DBE** firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the **DBE** is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian - any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization - any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance - that a recipient has not correctly implemented the requirements of this program.

OBCR - Office of Business and Community Resources, Rhode Island Department of Transportation's DBE, On the Job Training (OJT), Civil Rights and Business Development office.

Operating Administration or *OA* - any of the following parts of DOT: the Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Our - referring to the RI Department of Transportation

Personal net worth - the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating **DBE** firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification - the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient - a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business - the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for **DBE** program purposes.

Program - any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which 49 CFR § 26 applies.

Race-conscious measure or program - is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program - is one that is, or can be, used to assist all small businesses. For the purposes of this program, *race-neutral* includes gender-neutrality.

Recipient - is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FHWA, or FTA, or who has applied for such assistance.

Regular dealer - is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract is bought, kept in stock, and regularly sold or leased to the public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel, and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

RIDOA - Rhode Island Department of Administration.

RIDOT - Rhode Island Department of Transportation.

Secretary - the Secretary of Transportation or his/her designee.

Set-aside - a contracting practice restricting eligibility for the competitive award of a contract solely to **DBE** firms.

Small Business Administration or *SBA* - the United States Small Business Administration.

SBA certified firm - refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern - with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual - any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern - any concern at least 51 percent owned by an Indian tribe as defined in this section.

Objectives/Policy Statement

The Rhode Island Department of Transportation (RIDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The RIDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the RIDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the RIDOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT assisted contracts, without regard to race, color, national origin, or sex. To this end, it is also RIDOT's policy to ensure that the following program objectives are achieved:

- ◆ To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- ◆ To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- ◆ To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- ◆ To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- ◆ To help remove barriers to the participation of DBEs in DOT assisted contracts;
- ◆ To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Vanessa E. Crum, Esq., Administrator, Office of Business and Community Resources, has been delegated as the DBE Liaison Officer. In that capacity, Vanessa E. Crum, Esq. is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the RIDOT in its financial assistance agreements with the Department of Transportation.

RIDOT has disseminated this policy statement to the Deputy Director, Division Administrators and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

The policy statement is available on RIDOT's website www.dot.ri.gov.

Michael P. Lewis, Director

Date

Applicability

The RIDOT is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The RIDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Program Responsibilities

RIDOT has designated the following individual as our DBE Liaison Officer:

Vanessa Crum, Esq.
Administrator
Office of Business and Community Resources
Rhode Island Department of Transportation
Two Capitol Hill Room 111
Providence, RI 02903
401-222-3260 Ext. 4431
401-222-6168 Fax
vcrum@dot.ri.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the RIDOT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to Michael P. Lewis, Director, concerning DBE program matters. An organization chart displaying the DBELO position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 3 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes RIDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Manages the RIDOT Supportive Services Program.

Assurances

RIDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

RIDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. RIDOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The RIDOT DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the RIDOT of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the RIDOT deems appropriate.

Non-discrimination

The RIDOT will never exclude any person from participation, denial of benefits, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, RIDOT will not deny, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

If a contractor feels they have been discriminated against, they should contact:

Rhode Island department of Transportation
2 Capitol Hill Rm 109
Providence, Rhode Island 02903

ATTN: Title VI Coordinator
401-222-3260
401-222-6168 FAX

Contract Administration and Associated Requirements

Bid and Award Process

RIDOT's Contracts and Specification Section controls the advertising and award, through the public competitive bidding system, the transportation related contracts for the construction of roads, bridges, maintenance buildings, Professional Services or other transportation related matters. The Contracts and Specification Section is within the Administrative Services Division. The Assistant Director of the Administrative Services Division reports directly to the Director of Transportation. (See Attachment A)

Prompt Payment Mechanisms

RIDOT's Prompt Payment Clause is contained in Attachment D. This clause applies to both DBE and Non-DBE contracts. RIDOT has included this clause as specification section 109.12 in each DOT assisted contract. This clause requires primes to submit within 30 days of each progress payment a C-100 Form, "Certification of Progress Payment." Through its regular field monitoring activities, RIDOT performs interim audits to determine whether the prime is in compliance with the prompt payment requirements set forth in the contract Specification. RI DOT is currently transitioning to a civil rights compliance monitoring system that will enhance its ability to conduct *real-time* monitor of this requirement across all active projects.

Comment [d1]: Please incorporate guidance from FHWA Comments, point #3

Monitoring Payments to DBEs

To ensure primes are complying with their commitments under the contract, RI DOT currently monitors payments to subcontractors through the use of its C-100 Form, "Certification of Progress Payment." Prime

Contractors are required to submit this form within 30 days of each progress payment. RIDOT performs interim audits of contract payments to DBE's. These payment reviews ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the schedule of DBE participation.

In a 2010 Joint Process Review with FHWA, it was determined that the current monitoring process was insufficient to maintain a "running tally" of payments under each contract. RI DOT has since initiated the procurement of a civil rights compliance monitoring system that allows *real-time* tracking of payments. This system will also be used by subrecipients to ensure effective compliance monitoring on projects with goals, not administered by RIDOT.

Record Keeping. RIDOT requires prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the RIDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Retainage

In accordance with Title 42, Chapter 11.1-1 of the General Laws, all invoice vouchers submitted by the Contractor will be paid within thirty (30) days, provided however, that according to 42-11.1-5(B)2, the thirty (30) day period will not commence until the RIDOT has reviewed and accepted all invoice documentation in its proper and approved form.

The Prime Contractor shall make prompt payment for satisfactory subcontract work for which the RIDOT has made partial or full payment. After the initial partial payment, the Engineer will not make any progress payments for work performed by the Prime Contractor until the Prime Contractor certifies that payment has been disbursed to all subcontractors having an interest in the Contract, their full pro rata share of any previous progress payment within 30 days from receipt of the actual check from the State.

Each subcontractor will be paid their full pro rata share, unless the Contractor submits to the Engineer documentation which demonstrates good cause for not making any required payment and that such good cause as submitted is accepted by the Engineer. While good cause is under review, payments will continue. Once good cause is accepted by the Engineer, the Contractor shall provide written notification of any such good cause to the affected subcontractor. If good cause is not accepted and the Contractor elects not to proceed with arbitration under **Subsection 109.12.2; Dispute Resolution**, the Contractor will be expected to pay the subcontractor and no further payment to the Prime Contractor will be made until verification of payment is documented.

The subcontractor, within ten (10) days of receipt of payment, shall submit to the Prime Contractor a certification of payment for each of their subcontractors and for any persons or firms furnishing materials or equipment incorporated into the work. If the subcontractor fails to submit a certification of progress payment to the Prime Contractor within this time that shall be sufficient documentation of good cause for the Prime Contractor.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the RIDOT has partially accepted the work and all payments have been certified by the Contractor and the subcontractor, the Prime Contractor shall release all retainage held by the Prime Contractor, within 30 days of satisfactory completion of the subcontractor's work. The

subcontractor shall submit to the Prime Contractor the final executed certification of payment within ten (10) days of receipt of payment.

Note: The Rhode Island Department of Transportation has committed to revising its retainage provisions in accordance with 49 CFR 26.29 (b). Specifically, RIDOT will no longer withhold retainage from Prime Contractors and will prohibit Primes from withholding retainage from their Subcontractors. To implement this change it was necessary to revise our Section 100 Specifications and applicable procedures and management systems.

As a result of litigation against the State of Rhode Island in the Fall of 2010 RIDOT's Section 100 Specifications were promulgated as Purchasing Regulations. Even though RIDOT has prepared the necessary modifications to the applicable sections of the specifications/regulations, RIDOT is currently working with US DOT representatives and the State Division of Purchases for a comprehensive overhaul of what was promulgated as regulations, including the elimination of retainage. RI DOT estimates that this change will take effect within the next year.

Compliance Monitoring and Enforcement

The Office of Business and Community Resources (OBCR) is committed to performing regular project site visits and compliance reviews of participating contractors. With respect to DBE compliance monitoring and enforcement, commercially useful function reviews shall be conducted regarding the distinct elements of work under each approved DBE contract and subcontract (See Attachment C & E). This element is part of a broader effort to ensure that contractors comply with all federal-aid contract provisions promulgated through the regulations at 23 CFR 230, Appendix A of Subpart C, Part I.

The following personnel are responsible for monitoring the accuracy of information submitted:

- Contract Compliance Officer (Contracts and Specifications)
- Senior EEO Compliance Officer (DBE)
- Senior EEO Compliance Officer (OJT)
- Senior EEO Compliance Officer (DBE/OJT/admin)

DBE Special Provision

The Prime Contractor shall cooperate with the RIDOT in implementing the requirements concerning DBE utilization in accordance with 49 CFR Part 26. The Prime Contractor shall also cooperate with the RIDOT and DOT in reviewing the Contractor's activities relating to this provision. The DBE Special Provision is in addition to all other EEO requirements of the contract listed in FHWA Form 1273. (See **Attachment F**)

Good Faith Efforts

Pre-award

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting adequate good faith efforts. Appendix A to Part 26 will be used as a guideline in determining whether or not a bidder/offeror made adequate good faith efforts. RIDOT treats bidder/offerors' compliance with good faith efforts' requirements as a matter of responsiveness.

The Senior DBE Compliance Officer is responsible for making the initial determination regarding the bidder's/offeror's good faith efforts to meet the goal. In carrying out this function, the Senior DBE Compliance Officer will ensure that all information is complete and accurate and adequately documents the bidder's/offeror's good faith efforts before RI DOT commits to the performance of the contract.

Specifically, each solicitation for which a contract goal has been established will require the apparent low bidder to submit the following information:

1. The names and addresses of the firms that will participate in the contract;
2. Written documentation of the bidder's commitment:
 - a. The DBE Utilization Plan(**Attachment H**), along with the subcontracts/POs for those DBE subcontractors whose participation it submits to meet a contract goal. The descriptions of work and dollar values in both the Plan and subcontracts/Pos must be consistent.
3. If the contract goal is not met, evidence of good faith efforts will be reviewed. (**Attachment G**)

Post-award

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate *good cause* and obtain written approval from the OBCR.

In accordance with 49 CFR § 26.53 *good cause* includes the following circumstances:

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Administrative reconsideration

Within 10 days of being informed by RIDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Administrator
R.I. Department of Transportation
Office of Business and Community Resources
2 Capitol Hill, Room 111
Providence, RI 02903
401-222-3260 Ext. 4431
401-222-6168 Fax
vcrum@dot.ri.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. RIDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

DBE Directory

The RIDOA maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory is updated on a daily basis. The Directory is available as follows:

1. Minority Business Enterprise Compliance Office
RI Department of Administration
One Capitol Hill 2nd floor
Providence, RI 02908
2. www.mbe.ri.gov
3. <http://www.dot.ri.gov/contracting/bids/index.asp> click on MBE/WBE/DBE Directory

A sample page of the DBE Directory may be found in **Attachment B** to this program document.

Fostering Small Business Participation (26.39)

RIDOT's Small Business Initiative Mission

To encourage participation and competition among very small businesses in the U.S. Department of Transportation-funded procurement activities and to ensure that these businesses have an equal opportunity to provide goods and services to RIDOT.

General Description

RIDOT encourages very small businesses to participate in the procurement process and will strive to purchase commodities and services from very small businesses, DBE and non-DBE. To expand these efforts, RIDOT may utilize a Set-Aside Program to increase the participation of all very small businesses in the procurement process. Accordingly, RI DOT has established a Very Small Business Program (VSBP).

Definition

A Very Small Business (VSB) is one that:

- Is either a DBE or non-DBE
- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the U.S. economy by paying taxes or using American products, materials or labor; and
- Does not exceed the size standard for its industry in RI as defined below.

It may be a sole proprietorship, partnership, corporation, or any other legal form.

A very small business is one that does not have more than 15 employees and has annual revenue not to exceed \$1.5 million. A very small business is a business with annual gross receipts well below the SBA small business size criteria.

Outreach Activities

RIDOT's approach to identifying and reaching out to eligible or presumably eligible non-DBE firms to ensure the program opportunities are equally announced will include use of our annual bidders' survey which provides income ranges. We also have available to us the use of RI Dept. of Administration's RI Vendor Identification Program(RIVIP) to further identify potential small business participants.

The following media and forums will be used in carrying out this effort:

Brochures

Seminars

Labeling Projects (Similar to ARRA)

RIDOT's Web Page

RIDOT Press Release

Internal Education about Initiative

Educate VSBs about doing business with RIDOT

Kick Off Meeting: a meeting where eligible VSB, including non-DBEs, will be invited to learn more about RIDOT's VSB Program.

Unbundling and set-asides

This program does not replace the DBE program or otherwise operate as a substitute for the DBE program. It is simply another race- and gender-neutral tool that may offer additional contracting opportunities to DBEs as well as other eligible very small businesses. Section 26.43 generally prohibits the use of set-asides for DBEs ONLY. This means that limiting competition to DBEs – a category based on race- or gender-based classifications, which is forbidden. It is the race-conscious nature of a DBE set-aside that necessitates this prohibition. A very small business set-aside is different. In this case, competition is limited only on the basis of business size. This is a race-neutral, rather than race-conscious, classification. Consequently, a very small business set-aside does not fall under the prohibition applied to DBE set-asides.

Monitoring Eligibility Requirements

Post Qualifications

It is not required that RIDOT verify the status of every firm that might in some way benefit from RIDOT's program. However, if participation will result in a tangible advantage for a firm (e.g., getting a contract via a small business set-aside program), then verification is important to avoid program fraud.

To ensure that a firm is in fact a very small business concern and to minimize fraud and abuse, RIDOT shall take steps to verify eligibility of a firm to participate in the program.

As part of RIDOT's Post Qualifications, the Apparent Low Bidder (ALB) must certify that they meet the qualifications. This will include the submission of a financial statement and/or tax filings to determine that each ALB meets the VSBP size standards.

In the event that an Apparent Low Bidder is found to not qualify as a VSB, they will be deemed non-responsive and they shall be disallowed from bidding on future set-aside contracts unless they provide evidence that their status has changed and they qualify as a Very Small Business.

RIDOT Small Business Participation Plan

Attachment J has the current proposed plan. This appendix will be updated annually.

- a. Identify potential projects and tag as potential Very Small Business Projects
- b. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses,);
- c. Providing referrals in overcoming limitations such as inability to obtain bonding or financing (e.g., reducing bonding requirements, eliminating the impact of surety costs from bids, and providing referral services to help very small businesses obtain bonding and financing);

- d. Providing referrals to Rhode Island Economic Development Corporation (RI EDC) for technical assistance and other services;
- e. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other very small businesses on RIDOT mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- f. Implementing a referral process to RI EDC to: develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for small businesses;
- g. Providing referral services to RI EDC to help small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- h. Establishing a referral process to RI EDC to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- i. Encouraging very small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

Assurances

In addition to its standard DBE Program assurances submitted to the US DOT under 26.13, RIDOT gives further assurance that it will carry out this element of its DBE Program in a manner that ensures the following:

- 1. That certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- 2. That there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
- 3. That there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, very small businesses; and
- 4. That aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- 5. That the program is open to very small businesses regardless of their location (i.e., that there is no local or other geographic preference).
- 6. That there is no state law prohibiting the Very Small Business Program.

Cooperation and Oversight

Any U.S. DOT Operating Administration, in consultation with RIDOT, may limit the size and type of federally assisted contracts that participate in the Very Small Business Program to ensure effective competition based on the availability of very small businesses in the particular industry work code or market area.

RIDOT acknowledges that any Operating Administration of the U.S. DOT may withdraw approval of the Very Small Business Program if it is found to conflict with other relevant federal requirements, and it may rescind its approval if it determines that the program is being implemented in a way that creates a de facto DBE set-aside in violation of § 26.43.

Implementation of RIDOT's Very Small Business Program is subject to periodic review by U.S. DOT Operating Administrations FHWA for its effectiveness in helping RIDOT meet its requirement for a small business program. Approval may be rescinded if the program is deemed ineffective.

DBE Goal Setting

The following approved methodology is included to serve as a sample of RIDOT's application of and adherence to the USDOT regulations at 49 CFR § 26 and the Goal-setting Tips.

Step-by-Step Methodology

The U.S. Department of Transportation (USDOT) regulations appearing at 49 Code of Federal Regulations (CFR), part 26, requires each recipient of USDOT financial assistance to establish an annual goal for participation of Disadvantaged Business Enterprises (DBEs) in its USDOT-assisted contracting activities funded through the Federal Highway Administration (FHWA). The annual overall goal must be based on demonstrable evidence of the availability of ready, willing, and able (RWA) DBEs relative to all businesses ready, willing, and able to participate on Rhode Island Department of Transportation (RIDOT), USDOT-assisted contracts ("Relative Availability of DBEs").

In establishing our goal, RIDOT acknowledges the importance of fully engaging stakeholders and the public in meaningful ways to obtain relevant information in establishing its overall goal, and therefore has carefully considered all information gained through discussions with the public and program stakeholders. RIDOT may also undertake a mid-cycle review of the methodology if necessary to ensure the goal continues to reflect conditions that exist in the local highway transportation contracting market.

The Rhode Island Department of Transportation's proposed Overall DBE Goal is 11.16%. (Race Neutral (RN) = 1.58 %) (Race Conscious (RC) = 9.58%). The overall goal will be implemented for Tri-Annual Federal Fiscal Years 2012 - 2014.

Step 1. Determination of Base Figure for Relative Availability of DBEs

RIDOT continues to use the "alternative method" pursuant to 49CFR 26.45 (c) (5) in its approach to determine the base figure for FHWA-assisted contracts. RIDOT has further established Rhode Island as the local market area based on the geographic distribution of contracting dollars and areas in which the majority of contractors participated during the assessment period. Due to Rhode Island's small size, interest and participation are not limited to a particular geographic area within the state. While the majority of contracting dollars are awarded to Rhode Island-based firms, 91.96%, we note that 50 contractors (35.42%) in neighboring states seek participation on projects across Rhode Island, further demonstrating that RIDOT's FHWA-assisted contracting market is evenly distributed statewide (See table below). We determined that 91.96% of our contract awards/commitments in FFY 2008 - 2010 went to Construction and A&E firms located in Rhode Island. We also determined that the majority of Construction and A&E prime contractors (72%) that participated during FFY 2008 - 2010 were located in Rhode Island. This information is shown in the chart below.

Local Market Area Distribution

Description	Total Program Awards/Commitments FFY 2008 - 2010	Amount Represented by Rhode Island Firms FFY 2008 - 2010	Rhode Island Market Portion (%) FFY 2008 - 2010
Geographic distribution of Contract \$	\$457,605,860.48	\$420,806,554.22	91.96%
Geographic Distribution of Participating Prime Contractors	50	36	72%
Geographic Distribution of all Participating Contractors	192	124	64.58%
Massachusetts-based Contractors	41		
Connecticut-based Contractors	9		
Other Out of State Contractors	18		

The data collected resulted in a list of prime and subcontractors, DBE and non-DBE, that directly participated in, attempted to participate in, or are ready, willing and able (RWA) to participate in FHWA-assisted highway construction and Architectural and Engineering (A & E) contracts. To determine the relative availability of construction contractors, information was collected from the bidder's list, RI DBE Directory, Rhode Island Department of Purchases' Rhode Island Vendor Information Program (RIVIP) and RI DOT's Plan Holder's List. RIDOT examines each data source to establish a statistically sound estimate of the universe of all RWA firms, including DBE and non-DBE, expected to participate during the goal implementation period.

Please note RIDOT is conscious of not double counting when using this alternate method.

These sources are used in the following manner:

1) RI DBE Directory- Used to identify certified DBE firms that can be presumed as RWA in the coming goal period, specifically those that are "newcomers" to the program and may not appear on the Plan Holders/Bidders Lists. This source is particularly useful in identifying DBE manufacturers, regular dealers, and trucking companies known to participate that do not typically take out plans & specifications and were not reported during the Bidders List data collection process.

2) RIVIP (vendor registry) – RI Vendor Information Program is the website for the State of Rhode Island Division of Purchases. It contains all the projects currently advertised for all state agencies and where all businesses who wish to bid on state projects must register with Purchasing. RIVIP sends RIDOT a list of businesses who have viewed a FHWA-assisted project after the bid is opened. These businesses include prime contractors, subcontractors, prime consultants and sub-consultants that may not appear on other sources.

3) Bidders list- This source is used in conjunction with the other sources to identify RWA firms, specifically those that seek participation on LPA contracts. Bidders list data in accordance with 49 CFR Part 26.11 is collected from each prime bidder of state-managed contracts annually and within 45 days of bid opening for each locally administered contract. Each prime bidder submits a comprehensive list of subcontractors that bid or quote relative to FHWA-assisted contracts. Based on prime bidders responses in this process, RIDOT considers this information to be reliable, but notes it is only representative of firms that bid or quote, rather than firms that express an intent to participate through other efforts, as indicated by the other data sources examined.

4) Plan Holders List- For all RIDOT-administered contracts, plans and specifications are available on CD at no cost. Use of the Plan Holders List ensures the inclusion of all RWA firms that might not appear in the other sources.

5) Specific to A&E contracts, RIDOT reviews all submitted RFP's and collects data from each consultant's submission for the sub-consultants they planned to use. This is done on all consultant submissions whether or not they are awarded the contract. In addition, RIDOT sends the Bidders list survey out to each consultant to collect any other sub-consultants that may have attempted to gain work from the prime consultant on that contract(s).

For Consultant, Architects & Engineering contracts, a separate list was established. The list is comprised of consultant firms which include prime and sub-consultants, including DBE and non-DBEs that directly participated in, attempted to participate in, or are RWA to participate in FHWA-assisted A & E consultant contracts. All data sources, except for the plan holders list were utilized to identify the universe of consultants.

Rhode Island is a small state and the available award dollars varies every year. Therefore RIDOT established a three year time period for its data to be from **October 1, 2007 to September 30, 2010 (FFY 2008, 2009, 2010)**

From a review of the data relative to **construction** contracting, RIDOT determined that 102 DBE firms sought work on FHWA-assisted contracts and subcontracts. We also determined a total universe of 789 businesses, DBE and non-DBE. Based on this information, RIDOT determined the relative availability of DBEs to be 12.93% (102/789).

From a review of the data relative to **A&E** contracting, RIDOT determined that 61 DBE firms sought work on FHWA-assisted contracts and subcontracts. RIDOT further determined our total universe of A&E consultant firms to be 245. Based on this information, we determined the relative availability of consultant DBEs to be 24.90% (61/245).

Refinement to relative availability—RIDOT further reviewed the work available to ready, willing, and able DBEs during the goal implementation period. Based on a projected lack of work in the areas of Striping, Catch Basins, Landscaping, and limited number of 1R (sidewalk and curbing) Improvement contracts, RIDOT refined its universe above subtracting the number of RWA firms that specialize in these areas.

Based on projected FHWA-assisted construction and consultant projects during FFY 2012 – FFY 2014 RIDOT's FHWA-assisted contracting program will be comprised of 94.20% construction contracts and 5.80% consultant contracts. Accordingly, the following calculations were performed to derive an appropriately weighted baseline goal:

Review of the anticipated projects for FFY 2010

Universe of firms	1034	Universe of DBE's	163
No Anticipated work	235	No Anticipated work	17
Adjusted Universe	799	Adjusted DBE Universe	146
789 construction - 147 = 642		102 construction - 8 = 94	
245 consultants - 88 = 157		61 consultants - 9 = 52	
	799		146

The adjusted relative availability of all DBEs is 18.27% (146/799).

Construction 94.20% X (94/642) = 13.79%

Consultant 5.80% X (52/157) = 1.92%

Weighted Baseline goal: 15.71%

Step 2. Examination of Other Evidence for Determination of Availability and Adjustments

RIDOT examined the current capacity of DBEs to perform work on FHWA-assisted contracts based on the value of work performed in the last five (5) federal fiscal years (FFY 2006 - FFY 2010). The chart below shows total DBE participation relative to total participation on closed contracts over the period examined:

FHWA - Year Data	FFY2010	FFY2009	FFY2008	FFY2007	FFY2006	5 Year total
Total Value of payments on closed contracts	\$45,966,011	\$44,762,974	\$68,210,117	\$148,719,625	\$25,271,640	\$264,720,250
Total DBE Participation	\$4,968,440	\$2,957,532	\$10,784,098	\$9,004,368	\$1,533,230	\$29,247,668
DBE Race/Gender Neutral	\$747,512	\$708,996	\$2,439,276	\$1,064,433	\$170,651	\$5,130,868
DBE Race/Gender Conscious	\$4,220,927	\$2,248,536	\$8,344,822	\$7,939,935	\$1,362,579	\$24,116,799
DBE FFY %	10.81%	6.61%	15.81%	6.05%	6.07%	11.05%

Median Past Participation: 6.07+6.05+15.81+6.61+10.81 = 6.61%

RIDOT is seeking an adjustment in the relative availability using Past Participation (aka median past participation). The significant difference between relative availability and current capacity suggests a broad range where, statistically, DBE participation can be anticipated to fall near or at the median (6.61%). Based on current capacity of DBEs to perform work, RIDOT seeks the following adjustment:

Step 1 Baseline Goal **15.71%**
Median Past DBE Participation **6.61%**
Adjustment to Step 1 Baseline Goal 22.32% /2= 11.16%

RIDOT has not conducted a disparity study. RIDOT has searched the State of Rhode Island and has found that no disparity study exists pertaining to the transportation industry.

RIDOT sought additional evidence in related fields within its jurisdiction that may affect opportunities for DBEs to form, grow, and compete, such as statistical disparities for DBEs to obtain finance, bonding, insurance, employment, education and training. RIDOT's search produced no relative evidence in this area.

Based on the search for available data, we found no demonstrable evidence that logically or directly impacts any significant areas affecting DBE participation. Therefore, RIDOT seeks no further adjustments and has set an overall goal of 11.16%. RIDOT determined its race-neutral/race-conscious division based on past DBE participation using payment information for the 5-year period from 2006 to 2010. This data was based on prime contracts awarded to DBEs, the extent of DBE participation on contracts without goals, and DBE participation in excess of goals. RIDOT's estimate of the maximum feasible portion of the goal achievable through RN participation is based on past participation and is supported by the race-neutral measures noted below.

RIDOT has projected the race-neutral (RN) portion of its 11.16% overall goal to be 1.58%. It is projected that the remaining 9.58% of the overall goal will be achieved through race-conscious (RC) participation. RIDOT determined its median RN participation based on the data shown in the table below:

	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006
Total Value of Payments on Closed Projects	\$45,966,011	\$44,762,974	\$68,210,117	\$148,719,625	\$25,271,640
RN Participation	\$747,512	\$708,996	\$2,439,276	\$1,064,433	\$170,651
% RN Participation	1.63%	1.58%	3.58%	0.72%	0.68%

Median RN Participation: $0.68+0.72+3.58+1.58+1.63 = 1.58\%$

The data was compiled using the Champ software, and other data sources maintained by the RIDOT's Office of Civil Rights.

Description of the types of race-neutral measures implemented by RIDOT:

RIDOT's DBE/SS Program is managed by RIDOT under agreement with our consultant, Turino Group, to carry out the DBE/SS Program. As part of the current scope of work, Turino Group is assisting RIDOT in increasing participation in, and stabilizing the performance of underutilized Disadvantaged Business Enterprises, as well as other emerging and small businesses that are currently performing or have the potential of performing RIDOT transportation related work. Current services available to all small businesses through RIDOT include the following:

- How to do Business with RIDOT Brochure (in print, electronic and Power Point)
- How to Bid on a RIDOT Contract Brochure (in print, electronic and Power Point)
- How to use Quest Lite Brochure (in print, electronic and Power Point)
- Online posting of all available bidding opportunities

- Online posting and contract bid submission documents through RIVIP
- All Bid documents contained on CD for each Bid (Contract documents, plans, State & Federal Contract Provisions, RIDOT Standards and Specifications Blue Book)
- Online questions and answers posting by bid
- Online posting of plan holders list.
- Contract Bidding all Electronic including live remote bid opening
- Online posting of Bid tabulations

Public Notice and Participation

Consistent with the USDOT guidance to obtain feedback from as many interested stakeholders as possible, RIDOT hosted a Civil Rights Forum that included information about the goal setting process, and review of the overall Civil Rights requirements pursuant to FHWA Regulations. Two forums were held on March 4th and 7th 2011. Specifically, we discussed our data sources and how they were used in calculating the goal. RIDOT also discussed the reliability of the data collected and the scope of work for our current DBE Supportive Services contract and other initiatives in support of the National DBE Action Plan. In summary, this public participation meeting provided a forum for stakeholders to obtain a better understanding of the DBE goal setting process and an opportunity to provide feedback on the proposed DBE goal. RIDOT received no substantive feedback or comments from interested stakeholders concerning the goal setting methodology and the proposed goal. Approximately 110 people were in attendance, including governmental partners, construction contractors, material suppliers, professional services providers, DBEs, prime contractors, the Rhode Island Minority Contractor Association, the Construction Industries of Rhode Island (a trade association), and municipal partners.

Each year RIDOT holds a forum for interested stakeholders concerning the DBE Goal methodology. On or by June 15th every three years prior to the Tri-Annual Goal implementation period, a public notice announcing RIDOT's proposed overall Tri-Annual DBE goal will be published in the Providence Journal, the Providence American, and other minority publications informing the public that the proposed goal and the basis for its rationale are available for inspection for 30 days following the date of the notice. This same notice notifies the public that RIDOT and the Federal Highway Administration (FHWA) will accept comments on the goals for 45 days from the date of the notice. The same notice was placed on the RIDOT's website www.dot.ri.gov.

For FFY 2012 - 2014, due to State Fiscal Year 2012 budgetary constraints, RIDOT chose to publish the public notice in the largest distributed newspaper in RI. The public notice was published in the Providence Journal June 16, 2011. Therefore our 45 day comment period ended on August 1, 2011.

The 45-day comment period for RIDOT's FFY 2012- 2014 goal ended on August 1, 2011 (based on date of the last notice published). RIDOT did not receive any comments during this period of time or requests to review the goal setting methodology.

Transit Vehicle Manufacturers Goals

RIDOT/ FTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. A list of certified TVMs is available electronically by the FTA through its website; so the FTA conducts this certification as a centralized process.

Go To: www.fta.dot.gov/documents/TVM_posting4.7.09.pdf - 2009-04-07 Alternatively, RIDOT FTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

B. Failure to Meet Overall Goal

RIDOT acknowledges that it must make every good faith effort to meet its overall goal for each year of the three-year period.

RIDOT cannot be penalized or treated by the Department as being in noncompliance with 49CFR Part 26 because RIDOT's DBE participation falls short of the overall goal set by RIDOT unless:

- a. RIDOT has failed to implement and administer the DBE Program in good faith.
- b. RIDOT does not have an approved DBE Program.
- c. RIDOT does not have an overall DBE goal.

If the awards and commitments shown on RIDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, RIDOT must do the following in order to be regarded by the USDOT as implementing the DBE program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in our analysis and to enable us to meet fully our goal for the new fiscal year;
- (3) RIDOT must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, RIDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

FHWA, FTA, or FAA may impose conditions on RIDOT as part of its approval of RIDOT's analysis and corrective actions including, but not limited to, modifications to the overall goal methodology, changes in RIDOT's race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

RIDOT may be regarded as being in noncompliance and therefore subject to the remedies in §26.103 or §26.105 and other applicable regulations, for failing to implement the DBE program in good faith if any of the following things occur:

(i) Failure to submit an analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (3) above.

(ii) FHWA, FTA, or FAA disapproves the analysis or corrective actions; or

(iii) RIDOT did not fully implement the corrective actions to which committed or conditions that FHWA, FTA, or FAA has imposed following review of the analysis and corrective actions.

(4) If RIDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that RIDOT will achieve the DBE awards and commitments that would be necessary to meet the overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require RIDOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

C. Project Goals

The RIDOT will use contract goals to meet any portion of the overall goal RIDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

RIDOT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. RIDOT does not need to establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

Contract Goal Setting Process

Below is an outline of the process followed by OBCR in establishing contract goals:

- 1) The "Engineer's Estimate/Scope of Work" is received in the OBCR. These documents may originate from different sources such as Bridge Engineering, Highway Engineering, Maintenance, etc.
- 2) OBCR checks to ensure "ALL" items are included in the estimate, not just potential D.B.E. items.
- 3) If the project duration is not included in the estimate, OBCR contacts the originator or the project manager.

- 4) The D.B.E. Directory is reviewed to identify firms certified to perform the work shown in the estimate. Ready, willing, and able DBEs that appear to have the capacity to perform the items listed in the estimate shall be considered. Where it is unclear whether or not a DBE has the specific capacity to perform an item of work, an OBCR representative will contact the firm directly. This may be necessary where assigned NAICS codes encompass a wide range of work.
- 5) The total value of work for which a sufficient number of DBEs is available is determined.
- 6) The estimate total (less PSE) is divided by the total from step #5 to ascertain a maximum potential D.B.E. participation rate.
- 7) The OBCR reviews calculations and establishes a final DBE participation rate, generally set at 50% of maximum potential DBE participation determined in step #6.
- 8) The Goal letter is prepared for the OBCR Administrator's approval and signature.
- 9) The Goal letter is distributed to the appropriate RI DOT officials to ensure inclusion in the contract documents.
- 10) OBCR maintains backup documentation serving as the basis for each project goal.

D. Counting DBE Participation towards Goals

Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement. While DBEs may only be credited for work they are certified to perform, the NAICS code(s) that a DBE holds under certification is/are not a basis for the counting of participation.

The allowable value of a subcontract with a DBE participant will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for counting DBE participation toward meeting the contract goal stated herein are set forth below:

(1) When a DBE participates in a contract, RIDOT will count only the value of the work actually performed by the DBE toward DBE goals.

(2) RIDOT counts the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.

(3) RIDOT counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(4) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(5) When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(6) RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(a) A DBE performs a *commercially useful function (CUF)* when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, RIDOT examines similar transactions, particularly those in which DBEs do not participate. Any firm found to be acting as an extra participant or aiding such practice pursuant to fulfilling a contract commitment is subject to sanctions under Section 1.C. of RIDOT's DBE Special Provision.

(c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, RIDOT must presume that it is not performing a commercially useful function.

(d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. RIDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(e) RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating unit of the USDOT, but are not administratively appealable to USDOT.

(f) RIDOT will consider the following factors in determining whether a *DBE trucking company* is performing a commercially useful function: (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(i) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(ii) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(iii) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(iv) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (f) (iv): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(v) For purposes of this paragraph (f), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(g) RIDOT will count *expenditures with DBEs for materials or supplies* toward DBE goals as provided in the following:

(i) If the materials or supplies are obtained from a *DBE manufacturer*, RIDOT will count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) If the materials or supplies are purchased from a *DBE regular dealer*, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.

(iii) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of *fees or commissions charged for assistance in the procurement* of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- (h) If a firm is not currently certified as a DBE by the RIDOA at the time of the execution of the contract, RIDOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR 26.87(i).
- (i) RIDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the contract goal.
- (j) RIDOT will count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. See **Attachment k**, DBE verification of payment form.

Supportive Services

Business Development Programs

RIDOT has a business development program. The rationale for the program is described below:

There is an urgent need to address the underutilization of DBE's so that all firms can experience success within the DBE Program. The RIDOT has collected and analyzed over ten (10) years of historical data on the utilization of DBE firms both prime and as sub-contractors on RIDOT projects. Our analysis of the contracting data over this period has shown that statistically DBE firms of African-American, Asian-American, Hispanic American, and Native American ownership have been severely underutilized and have not been able to benefit from the DBE program in the same manner as other minority groups.

One method of addressing this underutilization is providing targeted and comprehensive business development assistance for these firms. In the past RIDOT has held various net-workings and/or meetings with underutilized DBE firms. RIDOT utilized information collected through surveys and questionnaires that indicate the need for individual assistance as opposed to group sessions that were held in the past. To assess the specific needs of the DBE firms, RIDOT continues to conduct comprehensive evaluations of each firm in the program, both through targeted surveys and questionnaires, as well as through customized and specific interviews to identify strengths, weakness, and areas of need.

General supportive services are available to all certified DBEs doing business with RIDOT in accordance with 49 CFR Part 26. Information can be obtained from the DBELO.

Mission 360

The Mission 360 SS/Program provides a direct link between business development programs, technical and financial assistance and allows for the utilization of new partnerships with existing community resources.

RIDOT has a web site www.mission360.com, and a DBE Newsletter that is emailed to contractors and participants. The Newsletter is also available on the web site.

Programs and Service Offerings:

Underutilized Business Services:

- Emerging Business Financing
- Equipment Purchase Program
- Contract Financing
- Business Development

It also provides immediate benefits:

- Program application in-take
- Assessment and technical assistance
- Focused RIDOT staff contacts and meetings
- Individualized consultation and follow-up services
- Technical assistance and business profiling

Other Support Services:

- DBE Certification Information
- Training Opportunities
- Selected Project Plans
- Business Development Workshops
- Presentations and Information on RIDOT Projects
- Transportation Industry Reports
- Program Software Applications(i.e.- QuickBooks)

Underutilized DBE Loan Program

RIDOT continues to contract for lending and loan administration with a minority firm to administer the RIDOT financial assistance program. Funding for the Emerging Business Program which is targeted to, among other things, assist start ups and established DBE firms that are within the underutilized categories. These are defined as those firms that are African American, Native American, Asian American and Hispanic. This financial assistance provides for the purchase of equipment in order to help make them more competitive in the road and bridge construction industry. This program is also designed to finance loans to qualified underutilized firms with RIDOT contracts.

Minority Outreach

The RI Minority Contractors Association is composed of all minority groups and the current President is one of RIDOT's active DBE subcontractors. RIDOT has a very good working relationship with this group and will strive to work with all organized DBE groups.

Hispanic Business Outreach

Hispanic Outreach is an ongoing initiative of the OBCR. The goal of the Hispanic Outreach initiative is to increase the participation of Hispanic owned firms in our current DBE program.

The OBCR partners with organizations, like the Hispanic Chamber of Commerce within the Hispanic community that will provide on going referrals and support of our efforts. Members of the Hispanic community are contacted in order to establish lists of names and contacts in the Hispanic community that are interested in working in road and bridge construction. Assistance will be provided upon request to any business in the areas of DBE certification, business planning, and how to prepare for RIDOT contract eligibility. Every effort is made to introduce Hispanic contractors to prime contractors and members of the industry.

Over-concentration

RIDOT has not identified that overconcentration exists in the types of work that DBEs perform.

Pursuant to 26.33, when RIDOT determines that DBE firms are overconcentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate, or allow contracting opportunities for other DBEs in other available disciplines, RIDOT will take appropriate measures as specified in 26.33.

RIDOT will obtain approval from the concerned DOT operating administration regarding its determination and any measures to address it. Once approved, these measures will become part of the RIDOT DBE Program until the overconcentration is reduced."

RIDOT encourages fair and competitive participation on all US DOT-assisted contracts and will not discriminate against DBE or non-DBE firms.

Set-asides or Quotas

The RIDOT does not use quotas in any way in the administration of race-/gender-conscious DBE program elements.

See Fostering Small Business Participation at Section 10 of this program for information regarding set-asides authorized by 49 CFR 26.39.

DBE Certification

The RIDOA will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine eligibility of firms to participate as DBEs in USDOT - assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certification decisions will be based on the facts as a whole.

The certification application forms and documentation requirements are found www.mbe.ri.gov

The Rhode Island Unified Certification Program consists of one certifying agency—The Rhode Island Department of Administration's, Minority Business Enterprise Compliance Office (MBECO). By Memorandum of Understanding (MOU) entered into in September 2005 among Rhode Island Department of Transportation (RIDOT), Rhode Island Airport Corporation (RIAC), and Rhode Island Public Transit Authority (RIPTA), the MBECO was designated to perform all DBE certification activities in accordance with the criteria and procedures of 49 CFR Part 26, Subparts D and E and to otherwise comply with all provisions of subparts D and E, unless specifically exempt.

Uniform Certification Procedures have been included at **Attachment I**.

For information about the certification process or to apply for certification, firms should contact:

Charles C. Newton
Administrator
Minority Business Enterprise Compliance Office
R.I. Department of Administration
One Capitol Hill, 2nd Floor

Providence, RI 02908
(401) 574-8670
Fax (401) 574-8387
E-mail: cnewton@gw.doa.state.ri.us

Record Keeping and Reporting

Since the RIDOT receives grant funding from FTA and formula funding from FHWA, RIDOT will continue to carry out this program until all funds from DOT financial assistance have been expended. RIDOT will submit for approval to the concerned DOT operating administration updates representing significant changes in the program.

RIDOT will report DBE participation to DOT as follows:

FTA – will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments.
All documents are reported in TEAM for FTA.

FHWA –will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments.

FRA - will report DBE participation on a semi-annual basis, using the reporting system as required by FRA.

The Uniform Reports of DBE Awards or Commitments and Payments are submitted to FTA and FHWA on June 1st and December 1st.

RIDOT will continue to provide data about its' DBE program to the Department as directed by DOT operating administrations.

Bidders List

The RIDOT maintains a bidders list, consisting of information about prime and subcontractors, DBE and non-DBEs, that bid or quote on DOT-assisted contracts. The purpose of this requirement is to collect as accurate data as possible about the universe of contractors who seek to work on federally-assisted contracts for analysis as part of RI DOT triennial goal-setting methodology.

RIDOT acquires the information below through an annual survey pertinent to RI DOT administered contracts, and within 45 days of bid opening for LPA projects. This approach ensures a maximum response, resulting in a statistically sound estimate of the universe of DBE and non-DBE, contractors and subcontractors, who seek to work on your Federally-assisted contracts:

- i. Firm name;
- ii. Firm address;
- iii. Firm's status as a DBE or non-DBE;
- iv. Age of the firm; and
- v. The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

Minority Owned Financial Institutions

It is the policy of the RIDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

The State of Rhode Island currently has no Minority-Owned Financial Institutions. However, RIDOT's specific efforts to locate and inform these institutions of opportunities and to link them with the contracting industry have been on-going.

Information, Confidentiality, Cooperation

Availability of Records

RIDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. RIDOT complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C 552 and 552a).

This would include any information that was relied upon for the certification or renewal of a DBE firm. Notwithstanding any contrary provisions of state or local law, RIDOA/RIDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter. However, the MBECO is required to transmit this information to USDOT in any certification appeal proceeding under 26.89 or upon request to any other state in which a firm has applied or is currently certified under 26.85.

Confidentiality of Information on Complainants.

Notwithstanding the provisions of 49 CFR part 26.109 (a), the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

Cooperation

RIDOT and the MBECO will cooperate fully regarding any request for information, including but not limited to, investigations, compliance reviews, and certification reviews. Additionally RIDOT will require its program participants to cooperate fully and may impose sanctions described at 26.109(c) and the RI DOT DBE Special Provision.

Intimidation and Retaliation.

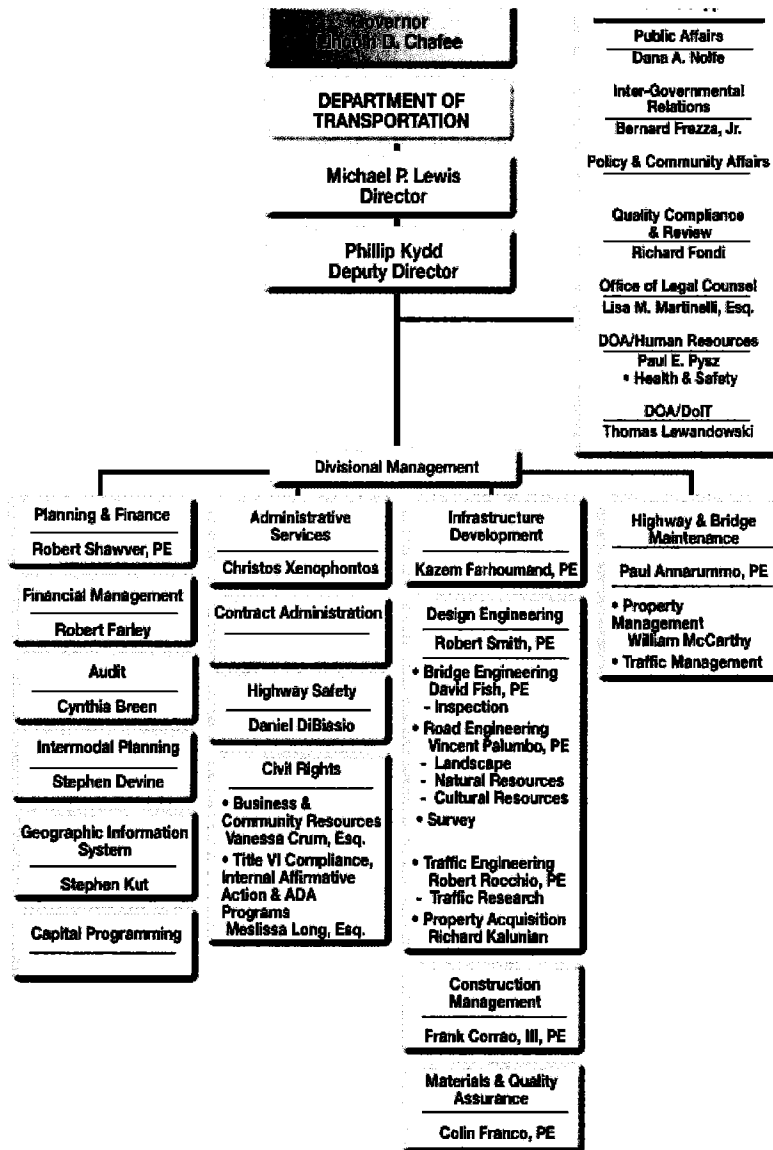
Subrecipients, contractors, or any other participants in their DOT's DBE Program, shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this program. Violations of this prohibition constitute noncompliance with the regulations at 49 CFR Part 26. RI DOT reserves the right to impose sanctions and administrative remedies, RI DOT may be obligated to report such violations to the appropriate US DOT authority for consideration of enforcement action. This shall not preclude RI DOT from implementing administrative remedies or any sanctions authorized under the program regulations.

ATTACHMENTS

Attachment A	RI Organizational Chart
Attachment B	Sample Page DBE Directory
Attachment C	Monitoring and Enforcement Mechanisms
Attachment D	Prompt Payment Provision 109.12
Attachment E	Commercially Useful Function
Attachment F	DBE Special Provision
Attachment G	Good Faith Efforts Forms
Attachment H	DBE Utilization Plan
Attachment I	Uniform Certification Procedures and Forms-- www.ri.mbe.gov
Attachment J	Fostering Small Business Program Appendices (FHWA/FTA/FRA)
Attachment K	DBE Verification of Payment
Attachment L	49 CFR Part 26 (http://ecfr.gpoaccess.gov)

Attachment A

Rhode Island Department of Transportation
Organizational Chart



Last updated November 16, 2011

Attachment B

Sample Page DBE Directory

Company Name: New England Medical Supply, Inc.

City: Providence

State: RI

Telephone: (401) 831-8030

Company Name: Essex Newbury North Contracting Corp.

City: Newburyport

State: MA

Telephone: (978) 463-5414

Company Name: New England Concrete Services, Inc.

City: Ludlow

State: MA

Telephone: (413) 547-6668

Company Name: New England Highway Technologies, LLC

City: Cranston

State: RI

Telephone: (401) 486-0550

After clicking on link:

New England Highway Technologies, LLC	
Mr. Richard Bisono	
1538 Elmwood Avenue	
Cranston , RI 02910	
Phone: (401) 486-0550	
Fax: (401) 270-5044	
E-Mail: nhwtech@yahoo.com	
MBE Cert: MBE	Status: H
DBE Cert: DBE	
TDC Code:	
Products: traffic control, safety & construction equipment supplier -signs, cones, barrels, vests, hardhats, harnesses, ADA mats, detectable & non-detectable electrical tape, traffic light units, electrical brackets, blades; plate compactor & submersible pump rental	
Primary NAICS Code: 423390	Other NAICS Code: 423710

Attachment C

Monitoring and Enforcement Mechanisms

Monitoring and Enforcement Mechanisms

The RIDOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. RIDOT will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. RIDOT will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment k lists the regulation, provisions, and contract remedies available to RIDOT in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. RIDOT will also provide a monitoring and enforcement mechanism to verify that work committed to DBE at contract award is actually performed by the DBE. This will be accomplished by Use of the CUF form with certification by the compliance officer performing the CUF review. (See Attachment E)
4. RIDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

RIDOT uses a civil rights software program to track and monitor performance of work done by subcontractors. Payments to subcontractors are also tracked and monitored this way. The software analyzes data by both payments and commitments, giving RIDOT a view of its overall goal and DBE program. This new web based Software interfaces with our Oracle Financial Management System and the Project Management Portal.

This software will be made available to all of RIDOT's subrecipients for their reporting requirements to RIDOT.

Enforcement Actions

Any person, who believes that the RIDOT has failed to comply with its obligations under Part 26, may file a noncompliance complaint with the concerned US DOT Office of Civil Rights. Said complaint must be filed within 180 days after the date of the alleged violation of Part 26.
USDOT Civil Rights Office Address:

U.S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE.
Washington, D.C. 20590

Attachment D

PROMPT PAYMENT

109.11 PROMPT PAYMENT PROCEDURES. In accordance with Title 42, Chapter 11.1-1 of the General Laws, all invoice vouchers submitted by the Contractor will be paid within thirty (30) days, provided however, that according to 42-11.1-5(B)2, the thirty (30) day period will not commence until the Department has reviewed and accepted all invoice documentation in its proper and approved form.

109.12 SUBCONTRACTOR PROMPT PAYMENT. The Prime Contractor shall make prompt payment for satisfactory subcontract work for which the Department has made partial or full payment. The term "subcontractor" as used herein, is defined in **Subsection 101.70; Subcontractor.**

After the initial partial payment, the Engineer will not make any progress payments for work performed by the Prime Contractor until the Prime Contractor certifies that payment has been disbursed to all subcontractors having an interest in the Contract, their full pro rata share of any previous progress payment within 30 days from receipt of the actual check from the RIDOT. The Prime Contractor shall submit to the Engineer prior to the next partial payment an executed FORM C-100, CERTIFICATION OF PROGRESS PAYMENT, for each subcontractor. Each subcontractor will be paid their full pro rata share, unless the Contractor submits to the Engineer documentation which demonstrates good cause for not making any required payment and that such good cause as submitted is accepted by the Engineer. While good cause is under review, payments will continue. Once good cause is accepted by the Engineer, the Contractor shall provide written notification of any such good cause to the affected subcontractor. If good cause is not accepted and the Contractor elects not to proceed with arbitration under **Subsection 109.12.2; Dispute Resolution**, the Contractor will be expected to pay the subcontractor and no further payment to the Prime Contractor will be made until verification of payment is documented on Form C-100 as described above.

The subcontractor, within ten (10) days of receipt of payment, shall submit to the Prime Contractor and RIDOT by way of their software program the date of payment for each of their subcontractors and for any persons or firms furnishing materials or equipment incorporated into the work. If the subcontractor fails to enter certification of progress payment to RIDOT and the Prime Contractor within this time, that shall be sufficient documentation of good cause for the Prime Contractor.

Final Subcontractor Payments. When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and the subcontractor on Form C-100, the Prime Contractor shall release all retainage held by the Prime Contractor, within 30 days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed Form C-100 within ten (10) days of receipt of payment.

Dispute Resolution. Disputes may result between the Prime Contractor and a subcontractor as documented as part of good cause for temporary non-payment. The Prime Contractor or subcontractor may submit a dispute. The documentation submitted to the Engineer shall include, but not be necessarily limited

Attachment E

Commercially Useful Function (CUF)

Commercially Useful Function

Of all the many elements in the DBE program there is one that can have the most detrimental impact on the ability of the prime contractor to meet its contract goal as well as the ability of a recipient to meet its overall goal. This one element is commonly referred to as commercially useful function or "CUF". How can just one element of the program have such an impact achieving the results Congress intended when it established the DBE program?

Both the prime contractor and the STA receives credit toward the DBE goal (contract and overall) only when a DBE working on a contract performs a CUF. DBEs generally perform work of a contract either as a contractor, a trucker, a regular dealer or a manufacturer. While each of these categories is evaluated differently when determining whether the DBE has performed a CUF, there is one guiding principle that must be met. Under the terms established in 49 CFR 26, a DBE firm performs a CUF when it is:

"Responsible for execution of the work of the contract or a distinct element of the work . . . by actually performing, managing, and supervising the work involved."

The question contract administrators often face is, "What are the management, supervision, and performance actions of a DBE firm that satisfactorily meets this requirement?" Evaluating these areas will form the basis to render a determination that a DBE has in fact performed a CUF. The subcontract is the one key reference point for any contract administrator and it is essential for this evaluation process. The subcontract has an effective description of the work to be performed by a DBE and is a legally recognized document.

The USDOT has described the following key factors in its DBE regulations to help determine whether a CUF is being performed:

- ❑ Evaluation of the amount of work subcontracted, whether it is consistent with normal industry practices;
- ❑ Whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal;
- ❑ When the DBE furnishes materials, the DBE must be responsible for negotiating the price, for determining the quality and quantity of the material, ordering the material and paying for it. As a contractor a DBE firm would typically be contracted to furnish and install or just to install an item in the contract
- ❑ Whether the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed through in order to obtain the appearance of DBE participation. In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE contract goal?

In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate. A DBE must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.

Normal Industry Practice

The most consistent thread through a CUF evaluation is whether the role the DBE is playing in any transaction is consistent with "normal industry practice." The concern is that the normal industry practice is determined largely by non-DBE firms and is often simply a practice repeated enough to set the normal industry practice. However, if normal practices in fact erode the ability of the DBE to control its work and remain independent, the practice is inconsistent with the DBE program. In such cases, the DBE program requirements must prevail.

One general rule of thumb that can be considered is whether a DBE firm would be performing in the manner it is if there was no DBE program. As further evidence of meeting normal industry practice, does the DBE firm perform this work on non-federal work?

Monitoring

In keeping with normal contract requirements, it is the primary responsibility of the prime contractor to ensure that the DBE firm is performing a CUF. The State Transportation Agency (STA), as the contracting agency, has a further oversight responsibility to ensure that the prime contractor has effectively met this responsibility under his/her contract with the STA.

The STA needs to have sufficient field personnel and general headquarters staff to monitor the performance of work to be performed by DBE firms on all federal aid projects, including those of sub-recipients.

Contractors, DBEs, local public agencies, and all employees are required to cooperate in carrying out this responsibility. The STA should establish and enforce monitoring procedures that include the following:

- ❑ Clearly written directives defining the role and interrelationship of the various departmental levels of the STA responsible to monitor and evaluate the contractor's compliance with the contract provisions;
- ❑ Procedures that spell out specific monitoring activities and responsibilities of a project level monitoring program;
- ❑ Exchange of information between departmental, central and field offices in reporting accomplishments, violations and enforcement; and
- ❑ Procedures for the application of appropriate sanctions once a determination of failure to meet the DBE contract requirements is made.

DBE Performance - CUF

Highway firms certified in the DBE program typically perform in four (4) categories: contractor, trucker, regular dealer and manufacturer. The following is an overview of each category, typical CUF questions and a list of documents to review.

CONTRACTOR

A contract administrator will most frequently work with a contractor, versus a regular dealer or manufacturer. Contract administration responsibilities for contractors have a broader scope of review and evaluation. To determine whether a DBE is actually performing their work, five (5) distinct operations must be considered: management, workforce, equipment, materials and performance.

These areas must be evaluated to make a CUF determination, and situations need to be reviewed on a case by case basis. Some of the CUF questions cited below may also be quite adaptable to the other three types of work categories.

Management

The DBE must manage the work that has been contracted to his/her firm. Management includes, but is not limited to:

- ☐ Scheduling work operations
- ☐ Ordering equipment and materials
- ☐ Preparing and submitting certified payrolls
- ☐ Hiring and firing employees.

The DBE owner must supervise daily operations, either personally or with a full time, skilled, and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations.

Typical CUF questions could include:

- ☐ Is there a written legal document executed by the DBE to perform a distinct element of work?
- ☐ Who does the on-site DBE representative report to?
- ☐ Has this individual ever shown up on any other contractor's payroll?
- ☐ Has the DBE owner been present on the jobsite?

Typical documentation to evaluate:

- ☐ Written contractual obligation document
- ☐ Daily Inspection report
- ☐ Project Inspection and Diary
- ☐ Payrolls

Workforce

In order to be considered an independent business, a DBE firm must keep a regular workforce. DBE firms cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control. All work must be performed with a workforce the DBE firm controls, with a minimum of **30%** of the work to be performed by the DBE firm's regular employees, or those hired by the DBE firm for the project from a source other than the prime contractor. The DBE, in all instances, must have direct supervision of all employees. This arrangement should be approved by the STA prior to commencing the work of the contract.

The DBE firm must be responsible for all payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.

The DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force. The DBE must not subcontract a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved.

Typical CUF questions could include:

- ☐ Who prepares the DBEs certified payroll?
- ☐ Has this individual ever shown up on any other contractor's payroll?
- ☐ Who does the DBE on-site representative contact for hiring, firing or to modify the contract due to site condition changes?
- ☐ List the name of DBE's crew. Have any of the employees ever shown up on any other contractors' payroll?

Typical Documents to evaluate:

- ☐ Written contractual obligation document
- ☐ Daily Inspection report
- ☐ Project Diary

Equipment

A DBE firm may lease specialized equipment from a contractor, excluding the prime, if it is consistent with normal industry practices and at rates competitive for the area. A rental agreement must specify the terms of the agreement. The lease must be for a short period of time and involve a specialized piece of equipment readily available at the job site. The lease may allow the operator to remain on the lessor's payroll, if this is a generally acceptable practice within the industry. The operation of the equipment must be subject to the full control of the DBE.

The DBE is expected to provide the operator for non-specialized equipment and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required. All lease agreements should be approved by the STA prior to the DBE starting the work.

On a case by case basis, the STA may approve the DBE to lease a specialized piece of equipment from the prime. However, the STA must ensure that this amount is not counted toward the contract goal. Equipment leased and used by the DBE firm with payment deducted from the prime contractor's payment (s) to the DBE is not allowed.

Typical CUF questions could include:

- ☐ List the major self-propelled (engine) equipment used by the DBE. Determine if the equipment belongs to the DBE. Is it owned or leased?
- ☐ If leased, is there a formal agreement identifying the terms and parties?
- ☐ Does the equipment have the DBE's markings or emblems?
- ☐ Is the equipment under the direct supervision of the DBE?
- ☐ Is the operator of the leased equipment the DBE's employee?
- ☐ If the equipment is leased, is the payment for the equipment deducted from the work performed?

Typical Documents to evaluate:

- ☐ Written contract document
- ☐ Daily Inspection report
- ☐ Project Diaries
- ☐ Lease Agreements

Materials

The DBE must assume the actual and contractual responsibility for the provision of the material to be incorporated into the item of work being performed by the DBE. The DBE must negotiate the cost, arrange delivery, and pay for the materials and supplies for the project. The DBE must prepare the estimate, quantity of material, and be responsible for the quality of materials. Invoices for material should show the payee as the DBE.

Typical CUF questions could include:

- ☐ Is there a written legal document executed by the DBE to perform a distinct element of work? Is the work to be performed by a DBE a “furnish and install” item of work?
- ☐ Who makes arrangements for delivery of materials?
- ☐ Who are the material invoices made out to?
- ☐ Who scheduled delivery of materials?
- ☐ In whose name are materials shipped?
- ☐ If two party checks are used, who are the parties identified as payable to?

Typical Documentation to evaluate:

- ☐ Written contract document
- ☐ Delivery Tickets
- ☐ Invoices
- ☐ Daily Inspection report

Performance

The DBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations).

Typical CUF questions could include:

- ☐ Does the DBE on-site representative effectively manage the job site without any interference from the prime contractor?
- ☐ Does the DBE appear to have control over methods of work on its contract items?
- ☐ Is the DBE actually scheduling work activities, material deliveries and other related actions required for execution of the work?
- ☐ Has any other contractor performed any amount of work specified in the DBE’s contract?

Typical Documents to evaluate:

- ☐ Written contractual obligation document
- ☐ Daily Inspection report
- ☐ Project Diary

DBE TRUCKING FIRMS

To be certified in the DBE program as a trucking firm, the DBE firm is only required to own and operate at least one fully licensed, insured, and operational truck used on the contract. To perform a CUF, a DBE firm must also be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

A DBE can lease a truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Otherwise, the DBE does not receive full credit for DBE participation.

Leased trucks must display the name and identification number of the DBE. The DBE trucker must also hold the necessary, where appropriate, license, hauling permit, etc., as required by the State to transport material on public highways.

To count DBE trucks toward a contract goal, the following can occur:

- ☐ The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE can count these trucks up to the number of trucks that the DBE owns/leases on the contract.
- ☐ The DBE may also lease trucks from a non-DBE firm and owner operators. The DBE can count the number of trucks up to the amount of the DBE trucks used on the contract.
- ☐ Additional DBE participation can be achieved from non-DBE trucks. However, the additional participation is only entitled to credit for the fee or commission it receives as a result of the lease arrangement.

In order for the STA to monitor the performance of a DBE trucking firm, the work to be performed must be covered by a subcontract or written agreement approved by the STA prior to performing the work. Additional documentation required when the DBE firm leases equipment is a valid lease agreement to be provided to the STA for appropriate action. To be considered valid, the lease agreement must include such items as the lessor's name, list of trucks to be leased by Vehicle Identification Number, (VIN), and the agreed upon amount of the cost and method of payment. It should be the responsibility of the DBE to provide the operator's fuel, maintenance and insurance for all leased trucks.

Typical CUF questions could include:

- ☐ Do the trucks used on the project belong to the DBE?
- ☐ If leased, is there a formal agreement identifying the terms and parties?
- ☐ Are the rates appropriate?
- ☐ Is there an approved subcontract or written agreement?
- ☐ If so, who are the parties? _____
- ☐ Is DBE trucking firm's employees shown on the certified payroll?

Typical Documentation to evaluate:

- ☐ Subcontract or written agreements
- ☐ Lease agreements
- ☐ Payroll records

DBE REGULAR DEALERS

In order for a firm to be deemed a regular dealer, it must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

It is important to make a distinction between a regular dealer and a firm that supplies a product on an ad hoc basis in relation to a particular contract or contractor. The latter does not meet the requirements of a regular dealer because supplier like functions is performed on an ad hoc basis or for only one or two contractors with supplier relationships. A regular dealer has a regular trade with a variety of customers. One of the key considerations of being a regular, established dealer is the presence of an inventory of materials and/or supplies. A regular dealer assumes the actual and contractual responsibility for the provision of the material and/or supply.

A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

Typical CUF questions could include:

- ☐ Does the regular dealer have an established storage facility and inventory?
- ☐ Does the dealer have a business that sells to the public on a routine basis in the product being supplied?
- ☐ Does the business stock the product for use on the project as a normal stock item?
- ☐ Who is delivering and unloading the material?
- ☐ Is distribution equipment used in delivering the product the DBE?
- ☐ Is it owned or leased?

Typical Documentation to evaluate:

- ☐ Purchase Orders
- ☐ Invoices
- ☐ Delivery Tickets

DBE MANUFACTURERS

As described in 26.55(e)(1)(ii) a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Another valuable source for defining what constitutes a manufacturer is Webster's dictionary that defines a manufacturer as a process or operation carried out systematically with division of labor and the use of machinery for making any material product from raw material by forming, shaping, and altering it into a form suitable for use. Examples of such items could be a concrete ready mix plant, a crushing operation, fabricating plant either steel or concrete, etc.

Typical CUF questions could include:

- ☐ Is the business primary business function to manufacture construction products?
- ☐ Does the business stock the product altered for this project as a normal stock item?
- ☐ Is the quality of the materials controlled by the DBE?

Typical Documents to evaluate:

- ☐ Purchase orders
- ☐ Bill of Lading
- ☐ Shipping tickets

When a DBE is presumed not to be performing a CUF, the DBE may present evidence to rebut this presumption. Decisions regarding CUF determinations are subject to review by concerned operating administrations, such as the FHWA. However, CUF decisions are not appealable to USDOT, they are contract administration issues.

CUF & Certification

Certification and commercially useful function are separate and distinct issues. Certification decisions address the nature of a firm's ownership and structure while CUF primarily concerns the role a firm has played in a particular transaction. Failure to perform a commercially useful function can be considered during the certification process; however it must not necessarily be the sole factor.

A DBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from the non-DBE firm, the STA should address this matter. A STA may commence a proceeding under 26.87 to determine the continued eligibility of the DBE firm.

In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE firm.

Sanctions for Compliance and Enforcement

The prime contractor is ultimately responsible for ensuring that a DBE performs a CUF. Failure of a DBE firm to perform a commercially useful function should result in the STA taking specific definitive actions to enforce the CUF requirement of the contract. Some of the actions a STA could take include but are not limited to the following:

- ☐ Require GFE to replace the DBE or meet the goal on remaining work;
- ☐ Withhold progress payments;
- ☐ Terminate the contract;
- ☐ Reduce the contractor(s) prequalification limit.

Some questions that could be part of an evaluation procedure:

- ☐ If a CUF was not performed by the DBE, what action was taken to correct the deficiency?
- ☐ Did the action taken, correct the deficiency?

List of Typical Documentation to Collect:

- ☐ Executed contracts
- ☐ Material/ Supply Agreements
- ☐ Invoices of materials/supplies
- ☐ Equipment Titles of Ownership
- ☐ Equipment Lease/Rental Agreements
- ☐ Hauling Tickets
- ☐ Delivery tickets
- ☐ Canceled Checks
- ☐ Project Inspection/Diary
- ☐ Payroll Records

Attachment E (1)

CUF CHECKLIST

COMMERCIALLY USEFUL FUNCTION
CHECKLIST

Project Name and Number: _____

Prime Contractor: _____

DBE Firm's Name: _____

Type of Operation;

- ☐ Contractor
- ☐ Trucker
- ☐ Regular Dealer
- ☐ Manufacturer
- ☐ Broker

Date Contract/Subcontract/Agreement Approved: _____

Start Date(s) of DBE's Work: _____ Date DBE to Complete Work: _____

Date of review: _____

Describe the type of work observed: _____

Check off each item used in conducting this review. The documents checked should be filed with the report for easy reference if needed. If the answer is "No" to any of the following questions provide an explanation in the general notes at the end of the report:

1. Management:

a. Is there a legal contract executed by the DBE to perform a distinct element of work?

☐ Yes

☐ No

b. Name of the on-site representative: _____

c. On-site representative reports to: _____

d. Has the on-site representative been identified as an employee of the DBE?

☐ Yes

☐ No

e. Has this individual ever shown up on any other contractor's payroll?

☐ Yes

☐ No

f. Does the DBE on-site representative effectively manage the job site without interference from any other non-DBE contractor?

☐ Yes ☐ No

g. Who does the DBE on-site representative contact for hiring, firing, or to modify the contract? _____

h. Has the DBE owner been present on the jobsite?

☐ Yes ☐ No

i. Does the DBE appear to have control over methods of work on its contract items?

☐ Yes ☐ No

j. Is the DBE maintaining its own payroll?

☐ Yes ☐ No

k. Who prepares the DBE's certified payroll? _____

l. Is the DBE actually scheduling work activities, material deliveries and other actions required for prosecution of the work? related

☐ Yes ☐ No

m. Did the DBE sublet any items or portions of the work to any other firm?

☐ Yes ☐ No

If yes, what % was sublet? _____%

Name of the firm _____

2. Equipment

a. List the major self-propelled (engine) equipment used by the DBE: _____

b. Does the equipment have the DBE's markings or emblems?

☐ Yes ☐ No

If another firm's markings are discernable, note the Name: _____

c. Is the DBE's equipment?

☐ Owned ☐ Leased from _____

d. If leased, is there a formal agreement identifying the terms and parties?

☐ Yes ☐ No

e. Is the equipment under the direct supervision of the DBE?

☐ Yes ☐ No

f. Is the operator of the leased equipment the DBE's employee?

☐ Yes ☐ No

it? _____

- g. If the equipment is leased, is the payment for the equipment deducted from the work performed?
☐ Yes ☐ No

3. Workforce:

- a. List the name of DBE's crew as observed during the operation described above:

- b. Has any of this crew ever shown up on any other contractor's payroll?
☐ Yes ☐ No

4. Materials:

- a. Is the work to be performed by a DBE a *furnish and install* item of work?
☐ Yes ☐ No

- b. Is the quality of the materials controlled by the DBE?
☐ Yes ☐ No

- c. If two party checks used, who are the parties identified as payable to:

- d. Who makes arrangements for delivery of materials? _____

- e. Material Invoices made out to: _____

- f. Who scheduled delivery of materials? _____

- g. In whose name area materials shipped? _____

- h. Does the prime contractor direct who the DBE is to obtain the material from and at what price?
☐ Yes ☐ No

5. Performance:

- a. Does the DBE appear to have control over methods of work on its contract items?
☐ Yes ☐ No

- b. Has any other contractor performed any amount of work specified in the DBE contract?
☐ Yes ☐ No

6. Other Work categories:

- a. Are trucks under the control of the DBE? ☐ Yes ☐ No
Are they ☐ Owned ☐ Leased from _____

If leased, is there a formal agreement identifying the terms and parties?
☐ Yes ☐ No

- b. Do the hourly rates meet the minimum wage requirements indicated on the Wage Decision?

- c. Is there an approved subcontract or written agreement?

☐ Yes ☐ No

Who are the parties? _____

- d. Is DBE trucking firms' employees shown on the certified payroll?

☐ Yes ☐ No

Regular Dealers:

- a. Does the regular dealer have an established storage facility and inventory?

☐ Yes ☐ No

- b. Does the dealer have a business that sells to the public on a routine basis in the product

being supplied?

☐ Yes ☐ No

- c. Does the business stock the product for the use on the project as a normal stock item?

Yes _____ No _____

- d. Is the quality of the materials controlled by the DBE?

☐ Yes ☐ No

- e. In whose name are the materials shipped? _____

- f. Who is delivering, and unloading the material? _____

- g. Is the distribution equipment used in delivering the product the DBE's?

☐ Yes ☐ No

Is it ☐ Owned?

☐ Leased

4. Manufacturer

- a. Is the business's primary function to manufacture construction products?

☐ Yes ☐ No

- b. Does the business stock the product altered for this project as a normal stock item?

☐ Yes ☐ No

- c. Is the quality of the materials controlled by the DBE?

General Notes:

The undersigned certifies that (s)he has reviewed the above referenced project and that the named DBE has been subject to monitoring for CUF compliance on this project and herein conforms with the contract and is true to the best of her/his knowledge and belief.

Reviewer's signature

Date

Attachment F

DBE Special Provision

DBE SPECIAL PROVISION

DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR CONTRACTORS AND CONSULTANTS

With respect to the above numbered RIDOT project, I hereby certify that I am the
(Title)

and duly authorized representative of _____
(Firm)

whose address is _____
(City) _____ (Street) _____ (State) _____ (Zip) _____

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the RIDOT Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

DEFINITIONS:

A "Broker", for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

"Disadvantaged Business Enterprise," or "DBE", for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A "Joint Venture", for purposes of this provision, is an association of a DBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A "Manufacturer", for purposes of this provision, is a DBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

A "DBE Contractor" or "DBE subcontractor", for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

"Race conscious" measures (goals) or programs are those that are focused specifically on **assisting** DBEs.

including DBE's.

"Small Business Concern" means, with respect to firms seeking to participate as DBE's in DOT-assisted contracts, a small-business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in Section 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. Women;
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

A "Regular dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel, and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its **DBE commitment during the construction period** will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by percent, and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in C below.
- B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department or such remedy as the Department deems appropriate.
- C. Brokering of work by DBEs is not allowed and is a contract violation (unless DBE is a certified DBE broker). A DBE firm involved in brokering of work may have their certification removed or

falsification distortion, or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in "C." above and referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. C, Section 1001.

- D. The Disadvantaged Business listings or other available resources may be obtained at the Rhode Island Department of Transportation, Business and Community Resources Office, 2 Capitol Hill Rm 111, Providence, RI. And www.ri.mbe.gov
- E. The utilization of disadvantaged business enterprises is in addition to all other equal opportunity requirements of this contract.
The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the contractor will include:
 - a. The number of DBE contractors, subcontractors, and suppliers; and the type of work, materials, or services being performed on or incorporated in this project.
 - b. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
 - c. Documentation of all correspondence. Contacts, telephone calls, etc., to obtain the services of DBE on this project.
 - d. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
 - e. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within 10 days from the opening of bids, the *contractor/consultant* shall as a minimum, take the following actions to *meet the race-conscious goal, hereinafter referred to as the "contract goal", of not less than ____ percent of the contract value to DBE contractors, subcontractors, and/or suppliers:*
 - (1) Appoint an EEO Officer to administer the Contractor's DBE Obligations.
 - (2) Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
 - (3) Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
 - (4) Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith efforts (GFE) review to determine the extent of the prime's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith

Part 20, Appendix A. RIDOT will consider this and other relevant evidence in making its CUF determination.

- (1) Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
- (2) Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS

A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with a DBE participant will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for counting DBE participation toward meeting the contract goal stated herein are set forth below:

- (1) When a DBE participates in a contract, RIDOT will count only the value of the work actually performed by the DBE toward DBE goals.
- (2) RIDOT counts the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
- (3) RIDOT counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (4) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (5) When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (6) RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (a) A DBE performs a *commercially useful function (CUF)* when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factor
 - (b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. In

transactions, particularly those in which DBEs do not participate. Any firm found to be acting as an extra participant or aiding such practice pursuant to fulfilling a contract commitment is subject to sanctions under Section I.C.

(c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, RIDOT must presume that it is not performing a commercially useful function.

(d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. RIDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(e) RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating unit of the USDOT, but are not administratively appealable to USDOT.

(f) RIDOT will consider the following factors in determining whether a *DBE trucking company* is performing a commercially useful function: (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(i) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(ii) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(iii) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(iv) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (f) (iv): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(v) For purposes of this paragraph (f), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(g) RIDOT will count *expenditures with DBEs for materials or supplies* toward DBE goals as provided in the following:

percent of the cost of the materials or supplies toward DBE goals.

(ii) If the materials or supplies are purchased from a *DBE regular dealer*, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.

(iii) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of *fees or commissions charged for assistance in the procurement* of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- (h) If a firm is not currently certified as a DBE by the RIDOA at the time of the execution of the contract, RIDOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR 26.87(i).
- (i) RIDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the contract goal.
- (j) RIDOT will count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

B. DBE Replacement and Termination:

A Prime must provide the Department's OBCR with a copy of its "Intent to Substitute/Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the RIDOT should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OBCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OBCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate *good cause* and obtain written approval from the OBCR.

In accordance with 49 CFR § 26.53 *good cause* includes the following circumstances:

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

non-discriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

C. Monthly Payment Certifications:

The Contractor shall provide monthly payment certification to the Department entitled "Certification of Progress Payment" Form. The Department shall provide the Contractor with the certification form as part of our electronic reporting software. The contractor is responsible for their subcontractors' compliance with the submission of their payment reporting by way of this software.

D. Joint Check Procedure for DBEs

A prime must receive written approval by the Department's OBCR administrator before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime to the Department's OBCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

- a. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE.
- b. The second party (typically the prime contractor) acts solely as a guarantor.
- c. The DBE must release the check to the supplier.
- d. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only.
- e. The DBE remains responsible for negotiation of price, determining quality and quantity and ordering materials.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the resident engineer certification of the dollars paid to each DBE firm, using Form "DBE Request for Verification of Payment". The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in sanctions listed in Section I.C. and I.D. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OBCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and the subcontractor on the Certification of Progress Payment Form, the Prime Contractor shall release all retainage held by the Prime Contractor, within 30 days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

(Signature of Contractor or Consultant) Date:

Attachment G

Good Faith Efforts

DBE GOOD FAITH EFFORTS DOCUMENTATION

**THIS INFORMATION MUST BE SUBMITTED WITH YOUR BID PROPOSAL IF YOUR
BID DOES NOT MEET THE PROJECT DBE REQUIREMENTS, OR WHEN REQUESTED
BY RIDOT**

CONTRACT ID. NUMBER

_____ **PROJECT**

NUMBER _____

FHWA NUMBER

DATE BID

SUBMITTED _____

BIDDER'S NAME

SIGNATURE _____

_____ **TITLE**

VENDOR NUMBER

_____ **DBE GOAL**

FROM BID PROPOSAL _____

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT ID. NO.

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____

TITLE _____

NAMES OF CERTIFIED DBEs AND THE DATES ON WHICH THEY WERE SOLICITED TO BID ON THIS PROJECT

INCLUDE THE ITEMS OF WORK OFFERED AND THE DATES AND METHODS USED FOR FOLLOWING UP INITIAL SOLICITATIONS TO DETERMINE WHETHER OR NOT DBEs WERE INTERESTED.

NAMES AND FED. TAX ID. OF DBEs SOLICITED	DATE OF INITIAL SOLICITATION	ITEM(S) OF WORK	FOLLOW-UP METHODS AND DATES

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY ATTACH COPIES OF SOLICITATIONS, TELEPHONE RECORDS, FAX CONFIRMATIONS, ELECTRONIC INFORMATION, ETC.

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT ID. NO. _____ DATE _____

SUBMITTED

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

**THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM
ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.**

BIDDER _____ **SIGNATURE**

TITLE _____

TELEPHONE LOG

DBE(s) CALLED	TELEPHONE NUMBER	DATE CALLED	TIME CALLED	CONTACT PERSON OR VOICE MAIL STATUS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT ID. NO. _____ DATE
SUBMITTED _____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR
RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO
SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY
REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____
TITLE _____

**ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE
FIRMS**

IDENTIFY THOSE ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE
FIRMS OR THOSE ITEM(S) THE BIDDER IDENTIFIED AND DETERMINED TO
SUBDIVIDE INTO ECONOMICALLY FEASIBLE UNITS TO FACILITATE DBE
PARTICIPATION. FOR EACH ITEM LISTED, SHOW THE DOLLAR VALUE AND
PERCENTAGE OF THE TOTAL CONTRACT AMOUNT. IT IS THE BIDDER'S
RESPONSIBILITY TO DEMONSTRATE THAT SUFFICIENT WORK TO MEET THE GOAL
WAS MADE AVAILABLE TO DBE FIRMS.

ITEM(S) OF WORK MADE AVAILABLE	NORMALLY PERFORMS ITEM(S) (Y/N)	ITEM(S) BROKEN DOWN TO FACILITATE PARTICIPATION (Y/N)	AMOUNT IN DOLLARS	PERCENTAGE OF CONTRACT

NOTE: ATTACH ADDITIONAL PAGES IF
NECESSARY

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT ID. NO. _____ DATE
SUBMITTED _____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR
RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO
SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM
ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____
TITLE _____

ADDITIONAL INFORMATION REGARDING ITEM(S) OF WORK
THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS (Continued

From Sheet 4)

ITEM(S) OF WORK MADE AVAILABLE, NAMES OF SELECTED FIRMS AND DBE
STATUS, DBEs THAT PROVIDED QUOTES, PRICE QUOTE FOR EACH FIRM, AND THE
PRICE DIFFERENCE FOR EACH DBE IF THE SELECTED FIRM IS NOT A DBE.

ITEM(S) OF WORK MADE AVAILABLE(CONT.)	NAME OF SELECTED FIRM AND FED. TAX ID	DBE OR NON-DBE	NAME OF REJECTED FIRM(S)	QUOTE IN DOLLARS	PRICE DIFFERENCE IN DOLLARS

NOTE: ATTACH ADDITIONAL PAGES IF

NECESSARY.
IF THE FIRM SELECTED FOR THE ITEM IS NOT A DBE, PROVIDE THE REASON(S)
FOR THE SELECTION ON A SEPARATE PAGE AND ATTACH. PROVIDE NAMES,
ADDRESSES, AND TELEPHONE NUMBERS FOR THE FIRMS LISTED ABOVE.

DBE GOOD FAITH EFFORTS DOCUMENTATION

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____

TITLE _____

_____ **ADVERTISEMENTS OR PROOFS OF PUBLICATION.**

NAMES AND EACH PUBLICATION IN WHICH A REQUEST FOR DBE PARTICIPATION FOR THE PROJECT WAS PLACED BY THE BIDDER. ATTACH COPIES OF PUBLISHED ADVERTISEMENTS OR PROOFS OF PUBLICATION.

PUBLICATIONS	DATES OF ADVERTISEMENT

CONTRACT ID. NO. _____ **DATE**
SUBMITTED _____

DBE GOOD FAITH EFFORTS DOCUMENTATION

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____

TITLE _____

NAMES OF AGENCIES CONTACTED TO PROVIDE ASSISTANCE

NAMES OF AGENCIES AND THE DATES THESE AGENCIES WERE CONTACTED TO PROVIDE ASSISTANCE IN CONTACTING, RECRUITING, AND USING DBE FIRMS. IF THE AGENCIES WERE CONTACTED IN WRITING, ATTACH COPIES OF SUPPORTING DOCUMENTS.

NAME OF AGENCY	METHOD AND DATE OF CONTACT	RESULTS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

DBE GOOD FAITH EFFORTS DOCUMENTATION

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT. THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____

TITLE _____

TECHNICAL ASSISTANCE AND INFORMATION PROVIDED TO DBEs

EFFORTS MADE TO PROVIDE INTERESTED DBEs WITH ADEQUATE INFORMATION ABOUT THE PLANS, SPECIFICATIONS, AND REQUIREMENTS OF THE BID DOCUMENTS TO ASSIST THE DBEs IN RESPONDING TO A SOLICITATION.

IDENTIFY THE DBEs ASSISTED, THE INFORMATION PROVIDED, AND THE DATE OF CONTACT. ATTACH COPIES OF SUPPORTING DOCUMENTS.

DBEs ASSISTED	INFORMATION PROVIDED	DATE OF CONTACT

DBE GOOD FAITH EFFORTS DOCUMENTATION

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER _____

SIGNATURE _____
TITLE _____

**EFFORTS MADE TO ASSIST DBEs OBTAIN BONDING, LINES OF CREDIT, INSURANCE, ETC.
EFFORTS MADE TO PROVIDE INTERESTED DBEs IN OBTAINING BONDING, LINES OF CREDIT, INSURANCE, NECESSARY EQUIPMENT, SUPPLIES, MATERIALS, OR RELATED ASSISTANCE OR SERVICES, EXCLUDING SUPPLIES AND EQUIPMENT THE SUBCONTRACTOR PURCHASES OR LEASES FROM THE PRIME CONTRACTOR OR ITS AFFILIATES.**

DBEs ASSISTED	ASSISTANCE OFFERED	DATES SERVICES OFFERED AND/OR PROVIDED

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY

CONTRACT ID. NO. _____ **DATE** _____
SUBMITTED _____

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT ID. NO. _____ DATE SUBMITTED _____

**IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR
RIDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO
SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.**

**THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY
REPRESENTS THE INFORMATION CONTAINED HEREIN.**

BIDDER _____

SIGNATURE _____

TITLE _____

**ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH
EFFORTS**

Attachment I

Uniform Certification Application
Personal Net Worth
DBE Affidavit

Attachment J

Small Business Program Appendices

FHWA (2015)

FTA (2015)

The Following are potential projects for the very small business plan:

Very Small Business Projects	
<u>Project</u>	<u>Estimate</u>
<u>Rose Island Lighthouse Newport</u>	<u>\$330,000.00</u>
<u>Woonasquatucket River Heritage Trail Providence</u>	<u>\$190,000.00</u>
<u>Smith's Castle North Kingstown</u>	<u>\$180,000.00</u>
<u>Cranston Street Enhancements Cranston</u>	<u>\$120,000.00</u>
<u>Pomham Rocks Lighthouse East Providence</u>	<u>\$100,000.00</u>
<u>Kingston Railroad Museum South Kingstown</u>	<u>\$280,000.00</u>
<u>TOTAL</u>	<u>\$1,200,000.00</u>

Attachment K
DBE Verification of Payment

STATE OF RHODE ISLAND
DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE REQUEST FOR VERIFICATION

R.I. CONTRACT NO: _____ F.A.P. NO. _____
DBE SUPPLIER: _____ SUBCONTRACTOR: _____
PRIME CONTRACTOR: _____
APPROVED CONTRACT ITEMS: _____
PERCENTAGE OF CONTACT _____ % AMOUNT \$ _____

The above referenced subcontractor/supplier was approved by the department as a DBE commitment toward this contract's goal. This form is required to finalize DBE participation and allow the project to proceed to contract closeout. Both the approved DBE and the prime contractor are required to verify participation and payment. If either party is unable or unavailable to sign, a detailed explanation must be attached and will be evaluated by the department. Failure to complete this form or to meet established project goals, notwithstanding the department's determination that good faith was exercised, will result in contract DBE sanctions and could lead to the noncompliant contractor viewed as non responsive or non responsible, and may impact the award of future projects.

This is to certify the following:

I was the approved DBE supplier/subcontractor on the above contract; I performed ☐ / did not perform ☐ the items of work subcontracted; the start date of my work was _____ with the completion date being _____. I actually received \$ _____ for my work associated with this contract. The contractor is still currently holding \$ _____ in contract retainage.

PRINT Name Authorized Signature Subcontractor Date

PRINT Name Authorized Signature Prime Contractor Date

DBE Program Official Date

Resident Engineer Date

Cc: Chief Engineer, Community and Business Resources, Contract Administration, Final Acceptance Section, Finalization Folder (Const.), File

FORM FAF-6 (REVISED 3/08)

EXHIBIT 34F

Attachment L

49 CFR Part 26

<http://ecfr.gpoaccess.gov>

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Attachment C
DBE Supportive Services Scope of Work

SCOPE OF WORK

For

Disadvantaged Business Enterprise Supportive Services: Business Development and Technical Assistance for DBE Participation on RIDOT Projects

BACKGROUND AND PURPOSE

The Rhode Island Department of Transportation/ Office of Business and Community Resources (RIDOT/OBCR) is seeking to acquire the services of a qualified and experienced business development provider (PROVIDER) to assist RIDOT in increasing participation and stabilizing the performance of Disadvantaged Business Enterprises (DBEs). These firms are emerging, marginalized and start-up businesses that are currently performing or have the potential of performing RIDOT transportation related work. The desired outcome is to level the playing field and allow DBE firms to acquire opportunities that will lead to a more equitable distribution of award opportunities. The selected PROVIDER - under the supervision of the RIDOT/OBCR - will be required to develop, establish, maintain and monitor an electronic **Business Development Assessment Program (BDAP)** to initially determine and document a DBE Firm's strengths and weaknesses and to monitor their progress by providing individualized training and technical assistance to include – at a minimum – construction management, financial packaging, bidding and estimating, marketing and certification assistance as well demonstrating specialized experience and qualifications pertinent to any engineering or professional fields required. The BDAP goal will be to promote effective business development and access to adequate capital as methods to meaningfully increase DBE performance and participation.

TASKS AND SERVICES TO BE PROVIDED – AT A MINIMUM – SHALL INCLUDE THE FOLLOWING:

TASK 1 - BUSINESS DEVELOPMENT ASSESSMENT PROGRAM (BDAP)

The PROVIDER will conduct an initial interview to identify the DBE's strengths, weaknesses, areas of desired growth and any major challenges that need to be addressed. Based on the information gathered, the PROVIDER shall use a customized web-based tool to develop the BDAP action plan, which identifies specific tasks and goals. The PROVIDER will track a DBE's progress through the creation of a web-based tool, which shall be updated at least once annually. This shall include metrics to determine how well the DBE is meeting its goals and as well as identify areas where further support is needed. The BDAP shall also give DBEs the opportunity to share the barriers they face and as this action plan progresses, provide feedback on how the Disadvantaged Business Enterprise/ Supportive Services Program (DBE//SS) can be improved. DBEs are also encouraged to establish their own core workforce as well as participate in the RIDOT On- the- Job Training (OJT) Program.

TASK 2 – FINANCIAL ASSISTANCE

The selected PROVIDER shall be responsible to provide financial training or assistance relative to each of the following economic areas:

- **Loan Packaging:** The selected PROVIDER will assist DBE firms in the area of capital resources by providing contacts, and through assisting in the development and presentation of loan packages, from which are anticipated loan approvals from commercial banks, SBA-guaranteed, or RIDOT loan program.

- **Bond Packaging:** The selected PROVIDER will assist in the preparation of bond packages, obtaining bonds or increases in bonding limits.
- **Computerized Accounting/ Finances:** The selected PROVIDER will assist firms in establishing accounting programs that will offer a more comprehensive view of their financial status and overall operations.
- **Job Cost Accounting System:** The selected PROVIDER will assist firms with establishing job cost integrated systems, cost estimations, calculating profit margins and managing cash flow.

TASK 3 – COMPETITIVE BIDDING ASSISTANCE

The RIDOT utilizes electronic bidding procedures in securing competitive bids for all **construction projects; engineering and professional services** require the submission of a well-written Request for Proposal for RIDOT review and evaluation. The selected PROVIDER shall be responsible to provide training or assistance relative to each of the following electronic bidding, estimating and negotiating skills:

- **Electronic Bidding Assistance-** Our assessment revealed that several DBE firms are not prepared to participate in the on-line bidding process due to a lack of computer technology capabilities. Classes will be offered to assist with increasing their capabilities and other tutorials of the on-line bidding process.
- **Technical Skills Assistance** - Based on a previous assessment of DBE firms, the findings identified several key factors that were impeding the growth and participation of our firms in the transportation industry. In an effort to strengthen and enhance the firms' ability to bid and estimate projects, specialized technical skills assistance should be provided. This would include intensive one-on-one assistance in plan reading, quantity take-offs, unit prices, overhead costs, bidding and estimating skills.

Organizational and writing skills shall be provided to DBE firms interested in submitting RFP submissions as either a Prime or as a sub-consultant on a project team.

- **DBE Firm Bidding as Prime:** The selected PROVIDER will assist DBE Contractors and Consultants to improve their estimating, bidding and negotiating skills to develop their capacity to bid as prime contractors or consultants on RIDOT projects.

TASK 4 – MARKETING AND NETWORKING SKILLS

- **Marketing:** The selected PROVIDER will assist DBE Firms in marketing their firms to the construction and professional services industries through developing individual marketing plans and tool kits based on each DBE firm's area of expertise and assist each firm in setting reasonable goals for growth.
- **Upcoming Projects/Lettings:** The selected PROVIDER will develop and implement a plan to increase the DBEs' knowledge of upcoming RIDOT construction/engineering projects prior to the solicitation of bids. DBE will be provided notification of Pre-Bid Meetings and Pre-Proposal Conferences for the respective construction and engineering projects so they may attend and network with the industry in attendance.
- **Project Oversight and Construction Management:** The selected PROVIDER will provide support on **active** DBE work- to be identified by the DBE Administrator- through review of cost effectiveness of operations and recommend efficient procedures for maximizing production while ensuring specification quality. Assistance could range from routine questions to field or office visits.

TASK 5 – DBE RECRUITMENT

- **Identify Deficient Areas of Specialization-** Actively recruit and assist potential DBE firms for program participation. The firms to be recruited shall be primarily involved in areas identified by the respective construction and engineering industries as deficient field of specialty in the transportation industry.
- **Recruiting and Certification Assistance:** The selected PROVIDER will recruit and solicit DBE certification applicants and will provide information and assistance in becoming certified as a RI DBE and in applying for any required RI business or professional licenses.
- **Seminars/ Workshops:** The selected PROVIDER will be required to provide the location, materials and conduct DBE seminars/ workshops on specified topics. The DBE Administrator may specify additional topics and/or may specify alternate locations if deemed necessary. All instructional materials developed for these seminars/ workshops will become property of RIDOT.

The seminars/ workshops shall consist of the following topics (at a minimum):

- ***Scheduling and Project Management***
- ***Bidding and Estimating (as a Prime and Sub)***
- ***RFP Review and Response***
- ***Contract Negotiation***
- ***Marketing***
- ***Plan Reading***
- ***Procurement Process***
- ***Business Plans***
- ***Bonding ,Insurance and Finance***
- ***Cost Management and Project Cash Flow Analysis***
- ***Accounting and Cash Flow Management***
- ***Emerging Technology***
- ***Software Packages and Tools***
- ***Networking***

Additional topics may be introduced with prior approval of the DBE Administrator. These seminars/ workshops will be open to the public, and should be used as a recruiting tool. The selected PROVIDER will select the dates, times, places and speakers for these seminars and will advertise and aggressively solicit participants.

Reporting Requirements

The selected PROVIDER will provide a **monthly activity report** attached to each monthly INVOICE detailing evaluation and data monitoring results to date. Additionally, **quarterly reports** must be submitted to the RIDOT/OBCR. These quarterly reports will be a composite of all monthly reports submitted listing the activities the PROVIDER performed in the previous quarter. This report will be submitted within 20 DAYS after the quarter's completion. The final quarterly report will be an **Annual Report**, and will be submitted within 30 DAYS of the completion of the contract period. RIDOT will forward the final report to the Federal Highway Administration (FHWA).

Performance Metrics to be Reported:

The **monthly activity report** shall include (as a minimum):

- Number of DBEs recruited
- Number of seminars/ workshops held
- Number of DBES bidding
- Number of DBEs receiving contracts
- New loans
- Paid off loans
- Number of business plans
- Number of marketing tool kits and
- any other measurable improvements

DBE Monitoring and Evaluation Tools:

To track DBE performance and supportive services program effectiveness, the selected PROVIDER will gather and analyze DBE/SS related feedback and data throughout the year using:

- Annual DBE Needs Assessments Surveys
- DBE Service Outcome Interviews
- Workshop Evaluations
- DBE Supportive Services Assistance Request Reports
- RIDOT construction projects bid by and awarded as contracts/subcontracts to DBEs
- DBE contract commitment information taken from various databases
- On-Site Visits, DBE Focus Groups and other communication with DBEs

These instruments will help identify, develop and target the types of services, benefits and support the selected PROVIDER offers to DBEs. Data gathered will be used in the quarterly and annual reporting from which effectiveness and results can be assessed.

PROVIDER Performance Requirements and Annual Evaluation:

RIDOT/ OBCR staff will be monitoring the PROVIDER'S performance on a regular basis. This includes daily contact when necessary. It also includes telephone and /or email follow-up with DBE participants to assess their progress and solicit their comments monthly.

Additionally, the selected PROVIDER will be required to perform an **ANNUAL EVALUATION**, to be completed by DBE clients, of the DBE supportive services provided. Copies of each evaluation completed are to be submitted to the RIDOT/OBCR for review and submission to the FHWA.

Specific Metrics/Deliverables:

1. The PROVIDER will be required to make contact with and assess at least **10 DBEs** for participation into the program with the goal of recruiting **5 new DBEs** into the DBE supportive services program annually.

2. Within 30 days of each assessment, the PROVIDER will present the DBE Administrator with a customized development action plan for concurrence. The resulting development plan will provide a basis for measuring the DBEs' performance.

THE SELECTED PROVIDER SHALL **NOT PERFORM any of the following functions or activities:**

- Make representations to any person or entity, other than RIDOT, as to the risk of doing business with any DBE.
- Discuss any DBE firm's financial situation with any Contractor/Consultant or third party unless a signed waiver has been received releasing RIDOT and the Consultant from any and all liability.
- Provide direct management or technical assistance to any DBE firm in the day-to-day operational or financial management of the business, which amounts to more than advice and counsel.

-END OF SCOPE

Attachment D
DBE Special Provisions

DBE SPECIAL PROVISION

DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR CONTRACTORS AND CONSULTANTS

With respect to the above numbered RIDOT project, I hereby certify that I am the

(Title)

and duly authorized representative of _____
(Firm)

whose address is _____
(Street)
(City) _____ (State) (Zip)

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

DEFINITIONS:

"Disadvantaged Business Enterprise," or "DBE", for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A "Joint Venture", for purposes of this provision, is an association of a DBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A "Manufacturer", for purposes of this provision, is a DBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

A "DBE Contractor" or "DBE subcontractor", for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

A "Regular dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel, and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

A "Broker", for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

"Race conscious" measures (goals) or programs are those that are focused specifically on *assisting* DBEs.

"Race neutral" measures or programs are those that are, or can be used to assist all small businesses, including DBE's.

"Small Business Concern" means, with respect to firms seeking to participate as DBE's in DOT-assisted contracts, a small-business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in Section 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- i. "Black Americans," which includes persons having origins in any Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. Women;
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its *DBE commitment during the construction period* will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by _ percent, and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in C below.
- B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department or such remedy as the Department deems appropriate.
- C. Brokering of work by DBEs is not allowed and is a contract violation (unless DBE is a certified DBE broker). A DBE firm involved in brokering of work may have their certification removed or suspended and shall be subject to the sanctions stated herein. Any firm that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in "C." above and referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. C, Section 1001.
- D. The Disadvantages Business listings or other available resources may be obtained at the Rhode Island Department of Transportation, Business and Community Resources Office, 2 Capitol Hill Rm 111, Providence, RI. And www.ri.mbe.gov
- E. The utilization of disadvantaged business enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the contractor will include:
 - a. The number of DBE contractors, subcontractors, and suppliers; and the type of work, materials, or services being performed on or incorporated in this project.
 - b. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
 - c. Documentation of all correspondence. Contacts, telephone calls, etc., to obtain the services of DBE on this project.
 - d. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
 - e. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within 10 days from the opening of bids, the *contractor/consultant* shall as a minimum, take the following actions *to meet the race-conscious goal, hereinafter referred to as the "contract goal", of not less than ____ percent of the contract value to DBE contractors, subcontractors, and/or suppliers:*
- (1) Appoint an EEO Officer to administer the Contractor's DBE Obligations.
 - (2) Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
 - (3) Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
 - (4) Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith efforts (GFE) review to determine the extent of the prime's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26; Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
- (1) Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
 - (2) Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS

A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with a DBE participant will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for counting DBE participation toward meeting the contract goal stated herein are set forth below:

- (1) When a DBE participates in a contract, RIDOT will count only the value of the work actually performed by the DBE toward DBE goals.
- (2) RIDOT counts the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
- (3) RIDOT counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (4) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (5) When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (6) RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (a) A DBE performs a *commercially useful function (CUF)* when it is responsible for execution of the work of the contract,

and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, RIDOT examines similar transactions, particularly those in which DBEs do not participate. Any firm found to be acting as an extra participant or aiding such practice pursuant to fulfilling a contract commitment is subject to sanctions under Section I.C.

(c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, RIDOT must presume that it is not performing a commercially useful function.

(d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. RIDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(e) RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating unit of the USDOT, but are not administratively appealable to USDOT.

(f) RIDOT will consider the following factors in determining whether a *DBE trucking company* is performing a commercially useful function: (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(i) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(ii) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(iii) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(iv) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (f) (iv): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(v) For purposes of this paragraph (f), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(g) RIDOT will count *expenditures with DBEs for materials or supplies* toward DBE goals as provided in the following:

(i) If the materials or supplies are obtained from a *DBE manufacturer*, RIDOT will count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) If the materials or supplies are purchased from a *DBE regular dealer*, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.

(iii) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of *fees or commissions charged for assistance in the procurement* of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- (h) If a firm is not currently certified as a DBE by the RIDOA at the time of the execution of the contract, RIDOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR 26.87(i).
- (i) RIDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the contract goal.
- (j) RIDOT will count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

B. DBE Replacement and Termination:

A Prime must provide the Department's OBCR with a copy of its "Intent to Substitute/Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OBCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OBCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate *good cause* and obtain written approval from the OBCR.

In accordance with 49 CFR § 26.53 *good cause* includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vii) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

C. Monthly Payment Certifications:

The Contractor shall provide monthly payment certification to the Department entitled "Certification of Progress Payment" Form. The Department shall provide the Contractor with the certification form as part of our electronic reporting software. The contractor is responsible for their subcontractors' compliance with the submission of their payment reporting by way of this software.

D. Joint Check Procedure for DBEs

A prime must receive written approval by the Department's OBCR administrator before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime to the Department's OBCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

- a. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE.
- b. The second party (typically the prime contractor) acts solely as a guarantor.
- c. The DBE must release the check to the supplier.
- d. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only.
- e. The DBE remains responsible for negotiation of price, determining quality and quantity and ordering materials.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the resident engineer certification of the dollars paid to each DBE firm, using Form "DBE Request for Verification of Payment". The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in sanctions listed in Section I.C. and I.D. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OBCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and the subcontractor on the Certification of Progress Payment Form, the Prime Contractor shall release all retainage held by the Prime Contractor, within 30 days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

(Signature of Contractor or Consultant)

Date: _____



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2016 FEB -5 P 3: 07

January 14, 2016

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Anita Heard
Equal Opportunity Specialist
Internal EEO Program Coordinator
Federal Transit Administration
Office of Civil Rights, TCR
1200 New Jersey Avenue
E54-420, East Bldg.
Washington, DC 20590

RE: RIDOT DBE Compliance Review

Dear Ms. Heard:

Thank you for allowing us to correct any factual errors in your draft report. I understand you began your review in June and concluded in August and that the review covered FY 11-14. As a new Director here at RIDOT, this review will provide me with invaluable insights into how to improve this Department and bring it into compliance with Federal Regulations. DBE compliance is critically important to the implementation of our mission.

There are several factual errors in the draft Review that should be corrected. Those errors are as follows:

- At page 8, first paragraph under 4.1; RIDOT has four rail stations, not five as stated.
- At page 8, last paragraph; there was no early retirement offered, rather the settlement of a pending pension reform lawsuit and the new administration hastened the departure of several employees.
- At page 10, the second bullet point under heading 4.2; "Alternative Study" should read "PE/NEPA".
- At page 10, the third bullet point "vehicle" should be replaced by "pedestrian", "pedestrian" should be replaced by "bicycle".
- At page 17, third paragraph under heading 6.3; Ms. Crum relinquished the DBELO role in June, 2012 not 2015.
- At page 22, first sentence states "Not included are FTA funds RIDOT provides to its sub recipient (MBTA) to operate commuter rail service in Rhode Island"; page 21 lists six FTA funded projects, three of these projects (Structure over Pawtucket Layover Inspection Facility, Pawtucket Layover Fueling/Sanding Facility and South Attleboro Station Improvements) are RIDOT's MBTA Commuter Rail Operations payments.

Anita Heard, Equal Opportunity Specialist

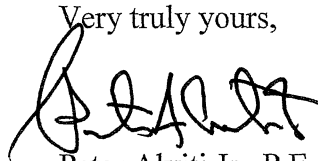
Page 2

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- At page 30, first full paragraph, per 49 CFR 26.47 as RIDOT is not “one of the 50 largest transit authorities as determined by the FTA” it is not required to submit analysis and corrective actions.
- At page 34, second full paragraph, the portrayal and mention of a former RIDOT compliance officer is not at all relevant nor connected to RIDOT’s record keeping process. This reference should be omitted.

We at RIDOT look forward to discussing the final report and the recommended actions that we already instituted. We are available should you need clarification on any information provided.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Alviti Jr.", with a stylized, cursive script.

Peter Alviti Jr., P.E.
Director